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1856

THE
FACTORY ACTS,

(COMPRISING THE STATUTES

42 G. 3. c. 73; 3 & 4 W. 4. c. 103; 4 & 5 W. 4. c. 1; 7 & 8 V. c. 15;
9 & 10 V. c. 90; 10 & 11 V. c. 23;
12 & 13 V. c. 54; 15 & 17 V. c. 104; 19 & 20 V. c. 38;

WITH THEIR RESPECTIVE SCHEDULES;

ALSO

NOTES AND A FULL REFERENCE TO CASES;

TOGETHER WITH

A Copious Index.

By THOMAS TAPPING, Esq.

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,

Author of Treatises on the Writ of Mandamus.—The High Peak Mineral
Customs.—The Derbyshire Mining Customs.—The 2nd Edition of
Mansel's Rhymed Chronicle of the Wirksworth Lead Mines.—
A Price Essay on the Coal-Book Principle in its relation
with Mining, &c. &c. &c.

LONDON:

SHAW AND SONS, FETTER LANE,
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ADVERTISEMENT.

HAVING been requested to add to my Edition of the Factory Acts the lately passed Act of the 19 & 20 Vict. c. 38, I have done so, together with a few Notes, which, it is hoped, will be found useful in understanding the complex subject of Factory Legislation. I have also added reliable Notes of the Cases of *Casswell v. Worth*, post, p. 110 *c*; and *Doel v. Sheppard*, post, p. 110 *d*; Cases which may well be considered as leading Cases in Factory Law.

The Report of the Inspectors of Factories to the Right Honourable Sir George Grey, Baronet, for the half-year ending the 30th of April, 1856, p. 4, records the following lamentable fact:—"The reports of
" accidents arising from machinery during the past
" half-year, show an increase over the previous one of
" 79 accidents, which include three additional deaths;
" and the circumstances under which several of the
" deaths and mutilations took place, leave no room to
" doubt that they would have been prevented had
" either of the fencing precautions, recommended by
" your predecessor and by yourself, been adopted."

Much unnecessary warmth of feeling has been displayed by persons who have endeavoured to show that certain statements made in the Preface to this Work were not founded in truth; such statements were, however, based on the Inspectors' Report for the half-year ending 30th April, 1855. But even if misstatements had occurred, they might have been refuted or dealt with in a calm, mild manner, and not by a recourse to the inelegant and vituperative language with which certain pamphlets on Factory Legislation abound. For the future, it is hoped that all acrimonious feeling will be laid aside, and that all parties, whether for or against the present policy of the Government, will cordially unite to protect and ameliorate the condition of the Factory operatives, whose lives and limbs are undoubtedly often ruthlessly sacrificed by, and are at all times in great and fearful danger from unfenced machinery.

T. T.

9, INNER TEMPLE-LANE,
31st July, 1856.

PREFACE.

THIS Volume of Factory Acts, containing the present Statute Law of Factories (a), is published in order to meet the demand that has arisen for a work embracing not only the last Acts of Parliament upon the subject, but also all the Cases of authority that have been decided on such Acts.

In the preparation of the work great care has been taken that the text should be correct, and that the arrangement and references should be such as shall enable every one, whether lawyer or not, consulting its pages to ascertain what the law of Factories now is—a task not a little difficult, inasmuch as the Statute Law of Factories is contained in no fewer than eight separate Acts of Parliament, each one (except the first) having, to a large extent, either modified or repealed its preceding Acts.

(a) Since the publication of Mr. Lumley's Factory Acts, no less than four Acts of Parliament have passed, whereby the law, as contained in that learned gentleman's work, has to a large extent been either modified or repealed.

The policy of the Factory Acts may be admitted to be the result of a just and benevolent consideration of the claims both of the mill occupiers, and also of their operatives, for whilst on the one hand there is ensured to the former the opportunity of obtaining a full day's labour, so, on the other, there is secured to the latter, not only religious and educational training, but also some personal comforts. The provisions for the protection of life and limb from accidents are, however, inadequate.

As to the *hours for working*. By the 13 & 14 Vict. c. 54, and 16 & 17 Vict. c. 104, the legislature repealed the Ten Hours Act, (10 & 11 Vict. c. 29,) whereby operatives might be employed 58 hours only in each week, and increased the hours for working to $10\frac{1}{2}$ hours on five days of the week, and $7\frac{1}{2}$ hours on Saturday, making a weekly average of 60 hours. In effect, such period of labour as well ensures to the manufacturer an amply remunerative return for his capital and industry, as it protects the operatives from the exhausting and even fatal effects of a too prolonged employment. During the six months ending 30th April last, there were laid no fewer than 84 informations for employing young persons and women after 6 o'clock, p. m.; 22 informations for employing them before 6 o'clock, and 30 informations for employing them during meal times. In general, however, manufacturers strictly comply with the statutory regulations as to the hours for labour.

The *religious and educational training* of factory

children and apprentices forms a prominent part of the factory system, which would, if it were faithfully observed, be productive of incalculable benefit to them. Religious training, though provided for by so early a statute as the 42 Geo. 3, c. 73, yet is not mentioned in any of the subsequent Acts—the consequence of which omission is, that in most cases the church attendance of the children, and their yearly examination by the minister of the parish, is, for the most part, either wholly neglected, or very lukewarmly observed.

The attendance, however, of the children at the factory school is provided for by nearly all the latter Factory Acts, and is also rigidly enforced by the Factory Inspectors. It is, therefore, very probable that the children have the full benefit of all that the legislature intended in this respect. Cases, however, occasionally occur of parents neglecting to send their children to school; but whenever such breaches of duty have been brought to the knowledge of the Inspectors, informations have been laid against the offending parties, and in each case heavy fines and costs have been inflicted. These prosecutions would be prevented, and the children ensured their due amount of instruction, if mill occupiers generally were to imitate the praiseworthy example of certain Scotch manufacturers, who, going considerably beyond the requisitions of the Factory Acts, provide school-rooms, pay the teacher's salary, and furnish the school with coal, light, and all other requisites, particularly a well-stored library, from which the workers are allowed

to have the use of the books at a mere nominal subscription. In particular the extensive establishment of Messrs. Peters, of Kirkland, on the Leven in Fifeshire, may be referred to.

As to *deaths and mutilations*. It may be observed, that the provisions introduced by the legislature into the Factory Acts for the protection of the lives and limbs of the operatives, have failed in their intended effect; for, melancholy to relate, during six months, ending the 30th April last, no fewer than 1,788 persons either lost their lives, or suffered mutilation from accidents arising from unfenced machinery. It is true the law says, that all mill-gearing whilst in motion for any manufacturing purpose, and near to which children or young persons are liable to pass, shall be securely fenced. But what is the penalty for a breach of this law? Simply a fine of not less than 5*l.*, and not more than 20*l.*, a sum perfectly ridiculous in amount when it is considered that the violators of the law are to a man wealthy capitalists, and are mostly possessed of mills the average worth of each of which is 100,000*l.* and upwards. The absurdity of the 5*l.* fine is admitted in the last report of the Factory Inspectors, wherein it is stated that there is a great disinclination among manufacturers to comply with the law, and fence their machinery; and moreover, that, in order to regulate the burthen of the numerous prosecutions with which they have been lately threatened by the Factory Inspectors, they, the manufacturers, have instituted "The National Association of Factory Occupiers," the special object of which,

it is said, is to raise a fund for defraying thereout all fines for not fencing which may be inflicted upon members. For the sake of suffering humanity, it is hoped that, notwithstanding such illegal association, the Inspectors will vigorously prosecute all violations of the law in this respect.

Besides the above *machinery accidents*, and within the same space of time, there have occurred no fewer than 1,857 deaths and mutilations, arising from accidents not being machinery accidents. Surely the yearly return of considerably more than 7,000 deaths and mutilations is a fact that should receive the prompt attention of the legislature.

The author suggests the following remedies :—That the penalty for unguarded machinery should be not a fine alone, but fine and imprisonment; as to the latter portion of which punishment, “The National Association of Factory Occupiers” would be powerless. In every instance an action for compensation to the injured party, or to his or her family, should be brought by the Factory Inspector in whose district the death or mutilation happens; to carry out which, further powers than those contained in the 7 & 8 Vict. c. 15, s. 24, should be given to Inspectors. A compendious and inexpensive method of procedure for compensation, without the intervention of pleadings and the expensive and technical detail of an action at law, should be instituted; and lastly, the Inspectors, being public officers, should be fully protected and indemnified against all

costs and personal inconvenience in respect of any of the proceedings taken by them in their public capacity. The case of *Coe v. Platt*, *post*, p. 47, affords an apt illustration of the inadequacy of the present powers now provided by the legislature for meeting so monstrous an evil as a yearly average of more than 7,000 deaths and mutilations, arising from the pursuit of one single branch of our national industry. Surely next session of Parliament will provide or endeavour to provide the remedy rendered necessary by so fearful a mortality and amount of human suffering.

THOMAS TAPPING.

9, INNER TEMPLE-LANE, TEMPLE,
2nd October, 1855.

CONTENTS.

	PAGE
PREFACE - - - - -	iii
Table of Cases - - - - -	xi
Statutes :—	
42 Geo. 3, c. 73 - - - - -	1
3 & 4 Will. 4, c. 103 - - - - -	9
4 & 5 Will. 4, c. 1 - - - - -	31
7 & 8 Vict. c. 15 - - - - -	33
9 & 10 Vict. c. 40 - - - - -	97
10 & 11 Vict. c. 29 - - - - -	98
13 & 14 Vict. c. 54 - - - - -	101
16 & 17 Vict. c. 104 - - - - -	107
Index - - - - -	110

TABLE OF CASES

DECIDED ON

THE FACTORY ACTS.

Carter v. Filliter	-	-	-	-	-	-	80
Castle v. Burdet	-	-	-	-	-	-	35
Coe v. Platt	-	-	-	-	-	-	47
———— (in error)	-	-	-	-	-	-	49, 66
Evans v. Stevens	-	-	-	-	-	-	5
<i>Ex parte</i> Aston	-	-	-	-	-	-	75
<i>Ex parte</i> Hopwood	-	-	-	-	-	-	8, 77
Rex v. Fell	-	-	-	-	-	8, 9, 31, 33, 98	
R. v. Tithe Commissioners	-	-	-	-	-	80	
Ryder v. Mills	19, 52, 53, 56, 61, 99, 100, 101, 102						
Schofield v. Shunk	-	-	-	-	-	46	

THE FACTORY ACTS,

&c. &c. &c.

The Factory Health and Morals Act, 1802.

42 GEO. 3, c. 73.

An Act for the Preservation of the Health and Morals of Apprentices and others, employed in Cotton and other Mills, and Cotton and other Factories (*a*).

[22nd June, 1802.]

WHEREAS it hath of late become a practice in cotton and woollen mills, and in cotton and woollen factories, to employ a great number of male and female apprentices, and other persons, in the same building; in consequence of which, certain regulations are become necessary to preserve the health and morals of such apprentices and other persons. Be it therefore enacted,

1. *Mills and factories employing a certain number of persons subject to the regulations of this Act.*] That, from and after the 2nd of December, 1802, all such mills and factories within *Great Britain and Ireland*, wherein 3 or more apprentices, or 20 or more other persons, shall at any time be employed, shall be subject to the several rules and regulations contained in this Act. And the master or mistress of every such mill or factory is

(*a*) The now repealed Act, 1 & 2 W. 4, c. 39, repealed all the then Factory Acts, except this one, 42 G. 3, c. 73.

It may be well to notice that this statute applies to *all* cotton and woollen mills and factories; whereas the 3 & 4 W. 4, c. 103, *post*, p. 9, and the 7 & 8 Vict. c. 15, *post*, p. 33, extend to those mills and factories only where steam, water, or other mechanical power is used to work the machinery. Though the above statute 42 G. 3, c. 73, is still unrepealed, some of its regulations,

applicable to apprentices, being still in force, yet it is for the most part practically superseded by the provisions contained in the statutes of this volume.

Print Works are governed by Acts of parliament having special reference to them. See the *Print Works Regulation Acts*, 8 & 9 Vict. c. 29, and 10 & 11 Vict. c. 70.

The *Ropework Exemption Act*, 9 & 10 Vict. c. 40, *post*, p. 97, does not exempt rope works from the operation of this Act.

hereby strictly enjoined and required to pay due attention to, and act in strict conformity to the said rules and regulations (a).

2. *The rooms shall be washed with quicklime and water twice a year, and care shall be taken to admit fresh air.*] And be it enacted, That all and every the rooms and apartments in or belonging to any such mill or factory shall, twice at least in every year, be well and sufficiently washed (b) with quicklime and water over every part of the walls and ceiling thereof (c). And that due care and attention shall be paid by the master or mistress of such mills or factories, to provide a sufficient number of windows and openings in such rooms or apartments, to insure a proper supply of fresh air in and through the same (c).

3. *Apprentices shall be supplied with two complete suits of clothing, &c., and a suit shall be delivered yearly.*] And be it further enacted, That every such master or mistress shall constantly supply every apprentice, during the term of his or her apprenticeship, with two whole and complete suits of clothing, with suitable linen, stockings, hats, and shoes; one new complete suit being delivered to such apprentice once at least in every year (d).

4. *Time of working not to exceed 12 hours. No apprentices to be compelled to work between 9, p.m., and 6, a.m.*] And be it further enacted, That no apprentice that now is or hereafter shall be bound to any such master or mistress, shall be employed or compelled to work for more than 12 hours in any one day (e), (reckoning from 6 o'clock, a.m., to 9 o'clock at night), exclusive of the time that may be occupied by such apprentice in eating the necessary meals: ‡

Provided always, that, from and after the 1st of June, 1803, no apprentice shall be employed or compelled to work upon any occasion whatever, between the hours of 9 o'clock at night and 6 o'clock in the morning (f).

(a) For the penalties on masters of-fending against this Act, see sect. 18, *post*, p. 6, and for the mode of recovering such penalties see sect. 15, *post*, p. 7.

(b) The subsequent statute 3 & 4 W. 4, c. 103, s. 26, *post*, p. 21, requires this to take place *once only* in every year. The 7 & 8 Vict. c. 15, s. 18, *post*, p. 48, does not require the lime-washing of the mill or factory more frequently than once within every period of 14 months. No alteration having been made in reference to the ventilation, this important part of the enactment is therefore still in force.

Prosecutions have of late been successfully instituted for a breach of this

provision, and heavy fines and costs inflicted.

(c) Certain humane directions have been issued by the inspectors as to age and dress of the persons to be engaged in these employments; and also as to the times when such lime-washings, &c., should take place. See 7 & 8 Vict. c. 15, s. 21, n. (e), *post*, p. 44.

(d) The meaning of this clause is somewhat obscure; it appears to be intended that the apprentice shall constantly during the term have from his master two suits of clothing, one of which is to be renewed every year.

(e) See stat. 3 & 4 W. 4, c. 103, s. 2, *post*, p. 10.

(f) See the provisions in the subse-

5. *In mills or factories wherein a certain number of spindles are used, apprentices may be employed in the night till certain periods.*] This clause provided for the working until certain periods which have long since elapsed.

6. *Apprentices to be instructed every working day for the first four years of his apprenticeship in reading, writing, and arithmetic.*] And be it further enacted, That every such apprentice shall be instructed (a) in some part of every working day (b) for the first four years at least of his or her apprenticeship, which shall next ensue from and after the 2nd of December, 1802, if he or she is an apprentice on the said 2nd of December, 1802, and for the first four years at least of his or her apprenticeship, if his or her apprenticeship commences at any time after the said 2nd of December, 1802, in the usual hours of work, in reading, writing, and arithmetic, or either of them, according to the age and abilities of such apprentice, by some discreet and proper person, to be provided and paid by the master or mistress of such apprentice, in some room or place in such mill or factory to be set apart for that purpose. And that the time hereby directed to be allotted for such instruction as aforesaid, shall be deemed and taken on all occasions as part of the respective periods limited by this Act during which any such apprentice shall be employed or compelled to work (c).

7. *Apartment of male and female apprentices to be kept distinct, and two only shall sleep in one bed.*] And be it further enacted, That the room or apartment in which any male apprentice shall sleep, shall be entirely separate and distinct from the room or apartment in which any female apprentice shall sleep; and that not more than two apprentices shall in any case sleep in the same bed.

8. *Regulations to be observed for the instruction of apprentices on Sundays.*] And be it further enacted (d), That every

quent statutes relative to the hours of working of children and young persons.

In factories, within stat. 3 & 4 W. 4, c. 103, s. 1, n. (b), *post*, p. 9, no person under 18 years of age shall be allowed to work in the night, that is, between half-past 8, p.m., and half-past 5, a.m., except as therein provided.

(a) See hereafter for provisions for the education of children in these factories under the age of 13, in 3 & 4 W. 4, c. 103, ss. 20, 21, and 23, and the 7 & 8 Vict. c. 15, ss. 51, 53, 59.

(b) This was too vague to be effectual.

(c) See stat. 7 & 8 Vict. c. 15, s. 53, *et seq.*, *post*, p. .

(d) These provisions for the religious instruction of apprentices are still in force; they provide as follows:

1st. That every apprentice shall, for at least one hour every Sunday, be instructed in the principles of the Christian religion.

2nd. That in England and Wales the children of members of the Church of England shall, once in every year, be examined by the rector, &c., of the parish, and, between the ages of 14 and 18, be instructed and prepared for confirmation, and confirmed.

3rd. That in Scotland the children of members of the Established Church shall, once in every year, be examined by the minister of the parish, and, between the ages of 14 and 18, shall be carried to church to receive the sacrament of the Lord's Supper, as administered in Scotland.

apprentice, or (in case the apprentices shall attend in classes), every such class shall, for the space of one hour at least every Sunday, be instructed and examined in the principles of the Christian religion, by some proper person to be provided and paid by the master or mistress of such apprentice.

And in *England and Wales*, in case the parents of such apprentice shall be members of the church of *England*, then such apprentice shall be taken, once at least in every year during the term of his or her apprenticeship, to be examined by the rector, vicar, or curate of the parish in which such mill or factory shall be situate. And shall also after such apprentice shall have attained the age of 14 years, and before attaining the age of 18 years, be duly instructed and prepared for confirmation, and be brought or sent to the bishop of the diocese to be confirmed, in case any confirmation shall, during such period, take place in or for the said parish.

And in *Scotland* where the parents of such apprentice shall be members of the established church, such apprentice shall be taken, once at least in every year, during the term of his or her apprenticeship, to be examined by the minister of the parish. And shall after such apprentice shall have attained the age of 14 years, and before attaining the age of 18 years, be carried to the parish church to receive the Sacrament of the Lord's Supper, as the same is administered in churches in *Scotland*.

And such master or mistress shall send all his or her apprentices under the care of some proper person, once in a month at least, to attend during divine service in the church of the parish or place in which the mill or factory shall be situated, or in some other convenient church or chapel where service shall be performed according to the rites of the church of *England*, or according to the established religion in *Scotland*, as the case may be, or in some licensed place of divine worship.

And in case the apprentices of any such master or mistress cannot conveniently attend such church or chapel every Sunday, the master or mistress, either by themselves or some proper person, shall cause divine service to be performed in some convenient room or place in or adjoining to the mill or factory, once at least every Sunday, that such apprentices shall not be able to attend divine service at such church or chapel. And such master or mistress is hereby strictly enjoined and required

4th. That the factory occupier shall, once a month, send all his apprentices to attend divine service.

5th. That if apprentices cannot attend church on any Sunday, divine service to be performed at the factory.

6th. That the factory occupier is enjoined to cause his apprentices to regu-

larly attend divine service according to the above directions.

For the penalties on masters for offending against this Act, see sect. 13, *post*, p. 6, and for the mode of recovering the penalties, see sect. 15, *post*, p. 7.

to take due care that all his or her apprentices regularly attend divine service, according to the directions of this Act.

9. *Justices at their Midsummer Sessions yearly shall appoint two visitors of such mills or factories, who shall report the condition thereof to Quarter Sessions.*] And be it further enacted, That the justices of the peace for every county, stewardry, riding, division (a), or place, in which any such mill or factory shall be situated, shall, at the midsummer sessions of the peace to be holden immediately after the passing of this Act (b) for such county, stewardry, riding, division (c), or place, and afterwards yearly, at their annual midsummer sessions of the peace, appoint two persons, not interested in, or in any way connected with, any such mills or factories, to be visitors of such mills or factories in such county, stewardry, riding, division (c), or place; one of whom shall be a justice of peace for such county, stewardry, riding, division (c), or place, and the other shall be a clergyman of the established church of *England* or *Scotland*, as the case may be.

And in case it shall be found inconvenient to appoint one such justice and one such clergyman as aforesaid, it shall be lawful to and for such justices, and they are hereby required to appoint two such justices or two such clergymen.

And the said visitors, or either of them, shall have full power and authority from time to time throughout the year, to enter into and inspect any such mill or factory, at any time of the day, or during the hours of employment, as they shall think fit; and such visitors shall report from time to time in writing, to the quarter sessions of the peace, the state and condition of such mills and factories, and of the apprentices therein, and whether the same are or are not conducted and regulated according to the directions of this Act, and the laws of this realm.

And such report shall be entered by the clerk of the peace among the records of the session in a book kept for that purpose: Provided always, that in case there shall be six or more such mills or factories, within any one such county, riding, division (c), or place, then it shall be lawful for such justices to divide such county, riding, division (c), or place, into two or more districts or parts, and to appoint two such visitors as aforesaid for each of such districts or parts (d).

(a) This means the separate parts of Lincolnshire. *Evans v. Stevens*, 4 T.R. 462; or the Isle of Ely, by 1 Vict. c. 53, s. 7.

(b) The Act was passed on the 22nd June, 1802.

(c) See n. (a), *supra*.

(d) It appears from the 3 & 4 W. 4,

c. 103, s. 17, *post*, p. 15, that these directions were not duly attended to, and that either the visitors were not appointed at all, or did not act efficiently. Indeed the power to inspect without the power to enforce was not calculated to effect the due performance of regulations such as those above prescribed.

10. *In case of infectious disorders prevailing, the visitors may require the master to call in medical assistance, &c.*] And be it further enacted (a), That in case the said visitors or either of them shall find that any infectious disorder appears to prevail in any mill or factory as aforesaid, it shall be lawful for them or either of them to require the master or mistress of any such mill or factory to call in forthwith some physician, or other competent medical person, for the purpose of ascertaining the nature and probable effects of such disorder, and for applying such remedies and recommending such regulations as the said physician, or other competent medical person, shall think most proper for preventing the spreading of the infection and for restoring the health of the sick.

And that such physician, or other competent medical person, shall report to such visitors, or either of them, as often as they shall be required so to do, their opinion in writing of the nature, progress, and present state of the disorder, together with its probable effects. And that any expenses incurred in consequence of the provisions aforesaid for medical assistance, shall be discharged by the master or mistress of such mill or factory.

11. *Penalty for obstructing visitors.*] And be it further enacted, That if any person or persons shall oppose or molest any of the said visitors in the execution of the powers intrusted to them by this Act, every such person or persons shall for every such offence forfeit and pay any sum not exceeding 10*l.* nor less than 5*l.* (b).

12. *Copies of this Act to be affixed in two conspicuous places of such mills or factories.*] And be it further enacted, That the master or mistress of every such mill or factory shall cause printed or written copies of this Act to be hung up and affixed in two or more conspicuous places in such mill or factory, and shall cause the same to be constantly kept and renewed, so that they may at all times be legible and accessible to all persons employed therein (c).

13. *Penalty on masters offending against this Act.*] And be it further enacted, That every master or mistress of any such mill or factory who shall wilfully act contrary to, or offend against, any of the provisions of this Act, shall for such offence, (except where otherwise directed), forfeit and pay any sum not

Accordingly the last-mentioned statute has provided for the appointment of *inspectors* and *sub-inspectors*, with very important powers and authorities; still, however, the above appointment of visitors has not been expressly repealed.

(a) None of the subsequent statutes contained in this volume have a clause analogous to the above.

(b) See 7 & 8 Vict. c. 15, s. 61, *post*, p. 74, for an analogous provision under that Act. For the recovery of penalties under this Act, see s. 15, *post*, p. 7.

(c) Though not repealed, this provision is practically superseded by the 3 & 4 W. 4, c. 109, s. 27, *post*, p. 21, and 7 & 8 Vict. c. 15, s. 28, *post*, p. 58, and 13 & 14 Vict. c. 54, s. 2, *post*, p. 102.

exceeding 5*l.* nor less than 40*s.*, at the discretion of the justices before whom such offender shall be convicted (*a*), as after mentioned; one half whereof shall be paid to the informer, and the other half to the overseers of the poor in *England* and *Ireland*, and to the minister and elders in *Scotland*, of the parish or place where such offence shall be committed, to be by them applied in aid of the poor rate, in *England* and *Ireland*, and for the benefit of the poor in *Scotland*, of such parish or place. Provided always, that all informations for offences against this Act, shall be laid within one calendar month after the offence committed, and not afterwards.

14. *Mills or factories employing a certain number of persons to be entered in a book kept by the clerk of the peace, who shall receive 2*s.* for each entry.*] And be it further enacted, That every such master or mistress shall, at the Epiphany sessions in every year, make, or cause to be made, an entry in a book to be kept for that purpose by the clerk of the peace of the county, riding, or division (*b*) in which any mill or factory shall be situate, of every such mill or factory occupied by him or her wherein three or more apprentices or twenty or more other persons shall be employed. And the said clerk of the peace shall receive for every such entry the sum of 2*s.* and no more.

15. *Penalties and forfeitures how to be recovered.*] And be it further enacted, That all offences for which any penalty is imposed under this Act, shall and may be heard before any two or more justices of the peace, acting in or for the place where the offence shall be committed.

And all penalties and forfeitures by this Act imposed, and all costs and charges attending the conviction of any such offender or offenders, shall and may be levied by distress and sale of the offenders' goods and chattels, by warrant under the hand and seal of any two or more justices of the peace acting for the county, stewartry, riding, division (*c*) or place where such offence shall be committed, rendering the overplus (if any) to the party or parties offending.

And which warrant such justices are hereby empowered and required to grant, upon conviction of the offender, either by confession, or upon the oath of one or more credible witness or witnesses (which oath such justices are hereby empowered to administer).

And in case such distress cannot be found, and such penalties, forfeitures, and costs shall not be forthwith paid, it shall and may be lawful for such justices, and they are hereby empowered and required, by warrant under their hands and seals, to commit such offender or offenders to the common gaol or house of cor-

(*a*) See form of conviction, s. 16, post, p. 8.

(*b*) See note (*a*), ante, p. 5.

(*c*) See note (*a*), ante, p. 5.

rection of the county, stewardry, riding, division (a) or place where the offence shall be committed, for any time not exceeding two calendar months, unless the said penalty, forfeiture, and costs, shall respectively be sooner paid and satisfied :

Provided always, that no warrant of distress shall be issued for levying any such penalty, forfeiture, or costs, until six days after the offender shall have been convicted, and an order made upon him or her for payment thereof; and no such conviction shall be removable (b) by *certiorari* or bill of advocation into any court whatsoever.

16. *Form of conviction.*] And be it further enacted, That every such conviction before such justices may be made in the following form (c); to wit,

‘County of } Be it remembered, that on the — day of —,
 ‘ — to wit. } in the year —, A. B. was, upon the complaint
 ‘ of C. D., convicted before — of the justices of the peace for the
 ‘ said county of —, [or, for —, of or in the said county of
 ‘ —, as the case shall happen to be], in pursuance of an Act,
 ‘ passed in the forty-second year of the reign of his Majesty
 ‘ King George the Third, for [or, as the case may be]. Given
 ‘ under our hands and seals, the day and year above written.’ (d)

Which conviction shall be certified to the next general quarter sessions, there to be filed amongst the records of the county, riding, or division (e).

17. *Public Act.*] And be it enacted, That this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, by all judges, justices, and others, without specially pleading the same.

(a) See note (a), *ante*, p. 5.

(b) A similar provision exists in 3 & 4 W. 4, c. 103, s. 42, *post*, p. 26, and 7 & 8 Vict. c. 15, s. 69, *post*, p. 77. See *Ex parte Hopwood*, 19 L. J. 192, M. C.; 8 C. 15 Q. B. 121. The case of *Rex v. Fell*, 1 B. & Ad. 380, was decided on the construction of this

clause and the now repealed Act, 6 G. 4, c. 68.

(c) By 11 & 12 Vict. c. 43, s. 32, proceedings under the Factory Acts are especially excepted from that statute.

(d) See penalty clause, s. 13, *ante*, p. 6, and mode of recovering penalties, s. 15, *supra*.

(e) See note (a), *ante*, p. 5.

The Factory Act, 1833.

3 & 4 WILL. 4, c. 103.

An Act to regulate the Labour of Children and young Persons in the Mills and Factories of the United Kingdom (a).
[29th August, 1833.]

WHEREAS it is necessary that the hours of labour of children and young persons employed in mills and factories should be regulated, inasmuch as there are great numbers of children and young persons now employed in mills and factories, and their hours of labour are longer than is desirable, due regard being had to their health and means of education: be it enacted,

1. *Persons under 18 years of age not allowed to work at night in the mills or factories herein described.*] That after the 1st of January, 1834, no person under eighteen years of age shall be allowed to work in the night, (that is to say,) between the hours of half past eight o'clock, p.m., and half past five o'clock, a.m. (b), (except as hereinafter provided) (c) in or about any cotton, woollen, worsted, hemp, flax, tow, linen, or silk mill or factory (d) wherein steam or water or any other mechanical

(a) This Act is by stat. 7 & 8 Vict. c. 15, *post*, p. 33, called *The Factory Act*, and is explained and amended by 4 & 5 W. 4, c. 1, *post*, p. 31. By the *Ropeworks Exemption Act*, 9 & 10 Vict. c. 40, *post*, p. 97, certain ropeworks are exempted from the operation of this Act.

Print Works are governed by Acts of parliament having special and exclusive reference to them. See the *Printworks Regulation Acts*, 8 & 9 Vict. c. 29, and 10 & 11 Vict. c. 70.

This Act, together with the 4 & 5 W. 4, c. 1, *post*, p. 31; the 7 & 8 Vict. c. 15, *post*, p. 33; the 10 & 11 Vict. c. 29, (s. 4), *post*, p. 100; the 13 & 14 Vict. c. 54, (s. 9), *post*, p. 106; and the 16 & 17 Vict. c. 104, (s. 5), *post*, p. 109; are to be construed as one Act. See *Rea v. Fell*, 1 B. & Adol. 380, as to the construction of several Acts directed to be construed as one Act.

(b) This clause is to some extent repealed by the 13 & 14 Vict. c. 54, s. 1, *post*, p. 102, which enacts that no young person or female above 18 shall be employed in any factory before 6 o'clock, a.m., or after 6 o'clock, p.m., save to recover time. And no young person and no female above 18 shall be employed to recover lost time, or for any other purpose, on any Saturday after 2 o'clock, p.m. See the 7 & 8 Vict. c. 15, ss. 29, 35, *post*, pp. 57, 81; the 10 & 11 Vict. c. 29, ss. 1—3, *post*, p. 99; the 13 & 14 Vict. c. 54, ss. 1—3, *post*, p. 102; and as to children, the 16 & 17 Vict. c. 104, ss. 1—3, *post*, p. 107. As to apprentices working at night, see 42 G. 3, c. 73, s. 4, *ante*, p. 2.

(c) See ss. 3, 4, & 5, *infra*.

(d) The 7 & 8 Vict. c. 15, s. 73, extended the provisions of this Act to fac-

power is or shall be used to propel or work the machinery in such mill or factory, either (a) in scutching, carding, roving, spinning, piecing, twisting, winding, throwing, doubling, netting, making thread, dressing or weaving of cotton, wool, worsted, hemp, flax, tow, or silk, either separately or mixed, in any such mill or factory situate in any part of the united kingdom of *Great Britain and Ireland* :

Provided always, that nothing in this Act shall apply or extend to the working of any steam or other engine, water-wheel, or other power in or belonging to any mill or building or machinery when used in that part of the process or work commonly called fulling, roughing, or boiling of woollens (b), nor to any apprentices (c) or other persons employed therein. Nor to the labour of young persons above the age of 13 years (d), when employed in packing goods in any warehouse or place attached to any mill, and not used for any manufacturing process :

Provided also, that nothing in this Act shall apply or extend to any mill or factory used solely for the manufacture of lace (e).

2. *Persons under 18 not to work more than twelve hours a day (f).* And be it further enacted (g), That no person under the age of 18 years (h) shall be employed in any such mill or factory in such description of work as aforesaid more than 12 hours (i) in any one day, nor more than 69 hours (j) in any one week, except as hereinafter provided (jj).

ories for the manufacture of *hair and fute*.

(a) See the general expressions used, 7 & 8 Vict. c. 15, s. 73, *post*, p. 81, respecting the interpretation of the word 'factory.'

(b) The exemption of this process seems no longer to exist. See 7 & 8 Vict. c. 15, s. 73, respecting the interpretation of the word 'factory.'

(c) See 7 & 8 Vict. c. 15, s. 73, respecting the interpretation of the word 'employment,' which would seem to include 'apprentices,' and therefore impliedly to repeal this provision as to apprentices.

(d) By the term *young persons* in this Act is meant persons of the age of 13 and under the age of 18 years. See 10 & 11 Vict. c. 26, *post*, p. 98.

(e) These exemptions are continued by 7 & 8 Vict. c. 15, s. 73, *post*, p. 82.

(f) Although this clause is given here entire, because it refers to subsequent clauses, yet in the main it is repealed by the 10 & 11 Vict. c. 26, ss. 1 & 2, *post*, p. 99, which reduce the hours to 11 per diem, or 68 in any one week until the 1st of May, 1848, and after that

time to 10 hours per diem, or 58 in any one week, *post*, p. 99. The stat. 13 & 14 Vict. c. 54, *post*, p. 103, further modifies the hours of working.

(g) See '*The 10 Hours Act*,' 9 & 10 Vict. c. 26, *post*, p. 99, by which the hours are altered to 11 per diem and 68 per week, and after the 1st of May, 1848, to 10 hours per diem, and 58 in any one week. See 13 & 14 Vict. c. 54, *post*, p. 103, which repeals to some extent '*The 10 Hours Act*,' and allows of 10½ hours of labour. The 16 & 17 Vict. c. 104, *post*, p. 107, applies to the labour of *children*.

(h) See 7 & 8 Vict. c. 15, s. 32, *post*, p. 89, as to the working of females above 18 years of age, and see 10 & 11 Vict. c. 26, s. 1, *post*, p. 98.

(i) See 42 G. 3, c. 73, *ante*, p. 1.

(j) It will be seen that on some days in the week the employment cannot continue for 12 hours. By the subsequent stat. 7 & 8 Vict. c. 15, s. 35, the working must cease on *Saturday* at half-past 4, p.m., and by subsequent statutes at 2 o'clock, p.m.

(jj) See *infra*, ss. 3, 4, & 6.

3. *Extension of hours of working in certain cases.*] Provided always and be it further enacted, That if at any time in any such mill, manufactory, or buildings situated upon any stream of water, time shall be lost in consequence of the want of a due supply or of an excess of water, or by reason of its being impounded in higher reservoirs, then and in every such case and so often as the same shall happen it shall be lawful for the occupier of any such mill, manufactory, or building to extend the time of labour in this Act prescribed at the rate of 3 hours per week until such lost time shall have been made good, but no longer. Such time to be worked between the hours of 5 o'clock, a.m., and 9 o'clock, p.m. (a). Provided also, that no time shall be recoverable after it has been lost 6 calendar months.

4. *Providing for time lost in cases of unavoidable accident.*] And be it further enacted, That when any extraordinary accident shall happen to the steam engine, water-wheel, weirs, or water-courses, main shafting, main gearing, or gas apparatus of any such mill, manufactory or buildings, by which not less than 3 hours labour at any one time shall be lost, then and in every such case such time may be worked up at the rate of 1 hour a day, in addition to the aforesaid and hereinafter restricted hours of labour, for the 12 following working days, but not after (b).

5. And whereas during periods of drought and of floods the power of water wheels on some streams is wholly interrupted, or so far diminished that the machinery or part or parts of the machinery dependant upon such power cannot be regularly worked at one and the same time, and in consequence thereof a certain portion of the time of such persons as are employed in the working of such machinery may be lost in each day during such period of drought or floods (c); be it therefore enacted,

Loss of time from the want or excess of water in the day-time provided for.] That it shall be lawful for the occupier of any mill, manufactory, or building, when time is so lost, then and in every such case and so often as the same shall happen, to extend the hours between which persons under 18 years of age are hereinbefore allowed to work, (*videlicet*, from 5 o'clock, a.m., till 9, p.m.,) (d) as hereinbefore limited, to such period as may

(a) Thus one hour per day might be gained. See 7 & 8 Vict. c. 15, ss. 33 & 34, as to the extension of the hours for working in this case. See also 13 & 14 Vict. c. 54, s. 4, *post*, p. 108; and as to the employment of *children* in recovering lost time, see 16 & 17 Vict. c. 104, s. 3, *post*, p. 108.

(b) This provision, except so far as the accident referred to may cause a stoppage of water, is repealed by stat. 7 & 8 Vict. c. 15, ss. 33, 34, *post*, p. 59.

See 13 & 14 Vict. c. 54, s. 1, *post*, p. 102, and 16 & 17 Vict. c. 104, s. 3, *post*, p. 108.

(c) See stat. 7 & 8 Vict. c. 15, s. 34, extending the time for working in the case which, like the clause in the text, does not *permit* any *child* to be employed to recover time so lost. See 13 & 14 Vict. c. 54, s. 4, *post*, p. 108, and 16 & 17 Vict. c. 104, s. 3, *post*, p. 108.

(d) See *supra*, sect. 5.

in such case be necessary to prevent the loss of time, and no longer:

Provided always, that no child or young person within the respective ages prescribed by this Act shall be actually employed a greater number of hours within the 24 hours of any one day than this Act declares to be lawful; and provided also, that no child under 13 years of age shall be employed after the hour of 9 o'clock, p.m., nor before 5, a.m.

6. *Time for meals.*] And be it further enacted, That there shall be allowed in the course of every day not less than 1½ hours for meals to every such person restricted as herein-before provided to the performance of 12 hours work daily (a).

7. *Employment of children under nine years prohibited.*] And be it enacted, That from and after the 1st of January, 1834, it shall not be lawful for any person whatsoever to employ in any factory or mill as aforesaid (except in mills for the manufacture of silk), any child who shall not have completed his or her 9th year of age (b).

8. *The employment of children under 11, 12, and 13 years of age for more than eight hours a day prohibited.*] And be it further enacted (c), That from and after the expiration of 6 months (d) after the 29th of August, 1833 (e), it shall not be lawful for any person whatsoever to employ, keep, or allow to remain in any factory or mill as aforesaid, for a longer time than 48 hours in any one week, nor for a longer time than 9 hours (f) in any one day (except as herein provided), any child who shall not have completed his or her 11th year of age, or after the expiration of 18 months (g) from the 29th of August, 1833, any child who shall not have completed his or her 12th year of age, or after the expiration of 30 months (h), from the 29th August, 1833, any child who shall not have completed his or her 13th year of age: Provided nevertheless, that in mills for the manufacture of silk, children under the age of 13 years shall be allowed to work 10 hours in any one day (i).

(a) The 7 & 8 Vict. c. 15, s. 36, *post*, p. 61, directs the times for the hours of meals, which provision would seem not to apply to children, as their hours of working cannot be distributed according to the above, s. 36.

By the subsequent statute, 18 & 14 Vict. c. 54, s. 3, *post*, p. 103, the hours of meals are further modified; and by s. 8 of same stat. will be seen what is an 'employment' during meal times.

(b) The period is now reduced to eight years. See 7 & 8 Vict. c. 15, s. 20, *post*, p. 57, and which makes no exception in reference to silk mills as to hours of working. See 16 & 17 Vict. c. 104, s. 3, *post*, p. 108.

(c) As to the employment of children see 16 & 17 Vict. c. 104, s. 3, *post*, p. 108.

(d) This means 6 calendar months. See 4 & 5 W. 4, c. 1, s. 1, *post*, p. 31.

(e) See *post*, p. 57, stat. 7 & 8 Vict. c. 15, ss. 30, 31.

(f) See clause 10, *infra*.

(g) See n. (d), *supra*.

(h) See n. (d), *supra*.

(i) By stat. 4 & 5 W. 4, c. 1, s. 2, *post*, p. 31, the clause, '10 hours in one day,' is declared to mean, '10 hours every working day in each week.'

By 7 & 8 Vict. c. 15, s. 73, children employed solely in the winding and throwing of raw silk, are not to work after half-past 4, p.m. of any Saturday.

9. *Holidays to be allowed.*] And be it further enacted, That all children and young persons whose hours of work are regulated and limited by this Act shall be entitled (a) to the following holidays; *videlicet*, on Christmas-day and Good Friday the entire day, and not fewer than eight half days besides in every year. Such half days to be at such period or periods, together or separately, as may be most desirable and convenient, and as shall be determined on by the master of such children and young persons.

Provided nevertheless, that in *Scotland* any other days may be substituted for Christmas-day and for Good Friday, both or either, as such master may determine.

10. *Children employed in any one mill less than 9 hours not to be employed in any other mill more than the residue of 9 hours.*] And be it further enacted, That if any child within the age herein-before restricted to 9 hours (b) of day labour shall have been employed in any one day for less than 9 hours in one factory or mill, it shall be lawful for any person to employ such child in any other factory or mill on the same day for the residue of such 9 hours; provided that such employment in such other mill or factory shall not increase the labour of such child to more than 9 hours in any one day, or to more than 48 hours in any one week (c).

11. *Children not to be employed without a certificate from a surgeon as to strength and appearance.*] And be it further enacted, That from and after the expiration of 6 months after the passing of this Act it shall not be lawful for any person to employ, keep, or allow to remain in any factory or mill any child who shall not have completed his or her 11th year of age without such certificate as is herein-after mentioned, certifying such child to be of the ordinary strength and appearance of a child of the age of 9 years (d), nor from and after the expiration of 18 months (e) after the passing of this Act any child who shall not have completed his or her 12th year of age, without a certificate of the same form, nor from and after the expiration of 30 months (f) after the 29th of August, 1833, any child who shall not have completed his or her 13th year of age, without a certificate of the same form, which certificate shall be taken to be sufficient evidence (g) of the ages respectively certified therein.

(a) This word 'entitled' led to the supposition that it was at the discretion of children and young persons whether they would work or not; but the subsequent statute, 7 & 8 Vict. c. 15, s. 37, puts an end to this supposed discretion. See *post*, p. 62.

(b) See sect. 8, *supra*, and see stat. 10 & 17 Vict. c. 104, *post*, p. 107.

(c) See the qualification introduced by stat. 7 & 8 Vict. c. 15, s. 30, *post*, p. 57.

(d) See the certificates required by stat. 7 & 8 Vict. c. 15, s. 9, *post*, p. 37.

(e) See n. (d), *ante*, p. 12.

(f) See n. (d), *ante*, p. 12.

(g) See stat. 7 & 8 Vict. c. 15, s. 53, *post*, p. 71.

12. *Certificates to be made by a surgeon or physician.*] And be it further enacted, That for the purpose of obtaining the certificate herein-before required in the case of children under the age of 11, 12, or 13 years respectively, the child shall personally appear (a) before some surgeon or physician of the place or neighbourhood of its residence (b), and shall submit itself to his examination.

And unless the surgeon or physician before whom the child has so appeared shall certify his having had a personal examination or inspection of such child, and also that such child is of the ordinary strength and appearance of children of or exceeding the age of 9 years, and unless also such certificate shall within 3 months of its date be countersigned by some inspector (c) or justice (d), or in that part of the United Kingdom called *Scotland* by some inspector or justice or burgh magistrate, such child shall not be employed in any factory or mill.

13. *Form of certificate of surgeon or physician.*] And be it further enacted, That the certificates herein-before required in the case of children under the age of 11, 12, or 13 years respectively shall be in the form following (e) :

‘I [*name and place of residence*] surgeon [*or physician*] do hereby certify, That A.B. the son [*or daughter*] of [*name and residence of parents, or if no parents, then the residence of the child*] has appeared before me, and submitted to my examination; and that the said [*name*] is of the ordinary strength and appearance [*according to the fact*] of a child of at least nine years of age [*or if apparently above nine, say exceeding*] (f).’]

14. *Children between 11 and 18 years of age not to be employed in factories more than 9 hours a day, or at night, without a certificate of age.*] And be it further enacted, That from and after the commencement of the several periods herein-before appointed for restricting the employment of children under the ages of 11, 12, and 13 years respectively (g), it shall not be lawful to employ, keep, or allow to remain in any factory or mill any person between the said ages respectively and the

(a) The 7 & 8 Vict. c. 15, s. 16, requires the occupier of the factory to obtain the surgical certificate, *post*, p. 41.

(b) See the appointment and qualifications of certificate surgeons, 7 & 8 Vict. c. 15, ss. 8, 10, *post*, p. 36. By s. 11 of last-mentioned Act, the inspection must be at the factory.

(c) By the 7 & 8 Vict. c. 15, ss. 9, 10, 11, the necessity of the counter-signature of the inspector is taken away. But the

inspector may, by sect. 14, *annul* any certificate.

(d) See 7 & 8 Vict. c. 15, s. 10, *post*, p. 37.

(e) See the forms required and provided by the sched. of 7 & 8 Vict. c. 15, *post*, p. 38.

(f) Printed forms of certificate, or indeed of any of the forms required by any of the Factory Acts, may be obtained of the publishers of this volume.

(g) See *supra*, sects. 8, 11.

age of 18 (a), for more than 9 hours in any day, nor between the hours of 9 o'clock, p.m., and 5 o'clock, a.m., without first requiring and receiving (b) from such person a certificate in proof that such person is above the age of 11, 12, and 13 respectively, which certificate, if a new certificate shall be required, shall be in such form (c) as may be ordered by any inspector.

15. *Penalties against persons not having certificates not to be levied if it shall appear that the person employed was above the age required.*] Provided nevertheless, and be it enacted, That the penalties and punishments herein-after provided against any person not requiring or not receiving such certificate shall not be levied, if upon the complaint or proceeding for the enforcement of such penalties it shall appear to the satisfaction of the inspector or justice, or in that part of the U. K. called *Scotland* to the satisfaction of the inspector or justice or burgh magistrate by or before whom such proceeding shall be had, that the person so employed more than 9 hours in the day, or between 9 o'clock, p.m., and half-past 5 o'clock, a.m. (d), without such certificate, was at the time of the alleged offence above the age of 11, 12, or 13 respectively (e).

16. *Provision in case magistrates refuse to countersign certificate.*] And be it further enacted, That in case any inspector (f) or justice or burgh magistrate shall refuse to countersign any such certificate, he shall state in writing his reasons for such refusal, and the parents of such child may thereupon take the certificate to the justices of the peace at petty sessions for the place or district of the child's residence, who are hereby empowered and required to decide upon the validity of such refusal; and every such act of any such petty sessions shall be free of all charge, cost, or expense whatsoever.

17. And whereas by an Act (42 G. 3, c. 73,) intituled *An Act for the Preservation of the Health and Morals of Apprentices and others employed in Cotton and other Mills and Cotton and other Factories*, passed in the 42nd year of the reign of George the 3rd, it was amongst other things provided (g), that the

(a) By stat. 7 & 8 Vict. c. 15, s. 9, *post*, p. 37, no surgical certificate is required for any young person above 16 years of age.

(b) By 7 & 8 Vict. c. 15, s. 16, the occupier of factory must obtain the certificate. See *post*, p. 41.

(c) The form is now set forth in sched. A. to 7 & 8 Vict. c. 15, *post*, p. 84.

(d) That is at night; see s. 1, *ante*, p. 9.

(e) This clause appears to be repealed by 7 & 8 Vict. c. 15, s. 40, *post*, p. 65.

(f) The inspector is not now authorized to countersign, but the justice is required to do so, unless the certificate be obtained from a certifying surgeon. Therefore, this provision seems to be still in force in reference to the justice.

(g) See 42 G. 3, c. 73, s. 9, *ante*, p. 5. The powers conferred upon the justices at their sessions are not repealed by the statute in the text, and some of them may certainly be still exercised, but they only extend to cotton and woollen factories.

justices of the peace for every county or place in which such mill was situated should appoint yearly two persons not interested in or in any way connected with such mills or factories in such county to be visitors of such mills or factories, which visitors so appointed were empowered and required by the aforesaid Act to enter such factories at any time they might think fit, and examine and report in writing whether the same were conducted according to the laws of the realm, and also to direct the adoption of such sanitary regulations as they might, on advice, think proper :

And whereas it appears that the provisions of the said Act with relation to the appointment of inspectors were not duly carried into execution, and that the laws for the regulation of the labour of children in factories have been evaded, partly in consequence of the want of the appointment of proper visitors or officers whose special duty it was to enforce their execution ; be it therefore enacted,

Inspectors to be appointed.] That upon the passing of this Act (29th of August, 1833) it shall be lawful for His Majesty by warrant under his sign manual to appoint during His Majesty's pleasure four persons to be inspectors of factories and places where the labour of children and young persons under 18 years of age is employed (*a*), and in the case of the death or dismissal of any of them to appoint another in the place of such deceased (*b*) inspector, which said several inspectors shall carry into effect the powers, authorities, and provisions of the present Act.

And such inspectors or any of them are hereby empowered (*c*) to enter any factory (*d*) or mill, and any school attached or belonging thereto, at all times and seasons, by day or by night, when such mills or factories are at work, and having so entered

(*a*) The present inspectors are 4 in number, and are Leonard Horner, Esq., Thomas Jones Howell, Esq., Sir John Kincaid, and Alexander Redgrave, Esq. These gentlemen are constantly and (judging from their elaborate reports) zealously engaged in their duties of visitation and inspectorship, part of which duties is, that each shall personally inspect the factories within his district. Their office is the Factory Inspectors' Office, London.

The sub-inspectors are, as it were, *local* inspectors, with limited powers. They are always actively engaged in their respective divisions, and make weekly reports of the factories they visit to their inspectors.

The inspectors are required by sect. 45, *post*, p. 26, to make half-yearly reports to one of Her Majesty's Principal Secretaries of State; such reports are

every half-year made to Her Majesty's Principal Secretary of State for the Home Department, and are presented to both Houses of Parliament by command of Her Majesty, the Queen.

(*b*) There is a defect here, as no power is given to appoint a successor in the case of a dismissal or resignation. It is also observable that there is no authority given for the payment of a salary to the inspector, though provision is made in s. 19, for the sub-inspectors; and in stat. 7 & 8 Vict. c. 15, s. 5, for their clerks and servants. The salaries have hitherto been paid under the authority of the Annual Appropriation Act.

(*c*) See the powers as extended by stat. 7 & 8 Vict. c. 15, s. 3, *post*, p. 34.

(*d*) This Act does not give an interpretation to the word '*factory*;' but see 7 & 8 Vict. c. 15, s. 75, *post*, p. 80.

to examine therein the children and any other person or persons employed therein, and to make inquiry respecting their condition, employment, and education.

And such inspectors or any of them are hereby empowered to take or call to their aid in such examination and inquiry such persons as they may choose, and to summon and require any person upon the spot or elsewhere to give evidence upon such examinations and inquiry, and to administer to such person an oath (a).

18. *Powers and duties of inspectors for the enforcement of this Act.*] And be it further enacted (b), That the said inspectors or any of them shall have power and are hereby required to make all such rules, regulations, and orders as may be necessary for the due execution of this Act, which rules, regulations, and orders shall be binding on all persons subject to the provisions of this Act (c).

And such inspectors are also hereby authorized and required to enforce the attendance at school of children employed in factories according to the provisions of this Act, and to order tickets or such other means as they may think fit for vouchers (d) of attendance at such schools.

And such inspectors are also hereby required to regulate the custody of such tickets or vouchers, and such inspectors may require a register of them to be kept in every school and factory.

And such inspectors are also hereby authorized and required to order a register of the children employed in any factory, and of their sex and hours of attendance, and of their absence on account of sickness, to be kept in such factory (e).

And all registers, books, entries, accounts, and papers kept in pursuance of this Act shall at all times be open to such inspectors, and such inspectors may take or cause to be taken for their own use such copy as they may think proper.

And such inspectors shall also make such regulations as may be proper to continue in force any certificates, tickets, or vouchers required by this Act, and such certificates, tickets, or vouchers so continued in force shall have the same operation and effect as new certificates, tickets, or vouchers.

And such inspector shall order and is hereby authorized to

(a) See also s. 38, *post*, p. 24. The inquiry is not necessarily a judicial one, and therefore is not affected by 7 & 8 Vict. c. 15, s. 2, *post*, p. 33.

(b) See an analogous section to this, 7 & 8 Vict. c. 15, s. 3, *post*, p. 34.

(c) The Secretary of State was authorized, by the proviso at the end of the next clause, to alter or disallow any order on complaint by any party in-

terested. But the power of the inspectors to make rules, regulations, and orders is taken away by stat. 7 & 8 Vict. c. 15, s. 2, *post*, p. 34, with some slight exceptions.

(d) See stat. 7 & 8 Vict. c. 15, s. 30, and sched. A., *post*, p. 83.

(e) See stat. 7 & 8 Vict. c. 15, s. 27, and sched. B., *post*, p. 87.

order the occupier of any factory or mill to register or cause to be registered any information with relation to the performance of any labour in such mill or factory, if such inspector deem such information necessary to facilitate the due enforcement of any of the provisions of this Act or of any of the regulations which he may make under the authority of this Act (a).

And such inspector is hereby authorized to order such occupier of any mill or factory to transmit (b), in such manner as may be directed in such order, any information with relation to the persons employed or the labour performed in such mill or factory that such inspector may deem requisite to facilitate the performance of his duties or any inquiry made under the authority of this Act.

19. *One of the Secretaries of State may appoint persons to superintend, under the inspector, the execution of this Act.*] And be it further enacted, That it shall be lawful for one of His Majesty's Principal Secretaries of State, if he shall see fit, upon the application of any inspector, to appoint any one or more persons to superintend (under (c) the direction of any inspector), the execution of the provisions of this Act, and of all rules, regulations, and orders made under the authority thereof.

And such person shall be paid by such salary as may be determined by one of His Majesty's Principal Secretaries of State. And such person so appointed shall have authority to enter any school-room, counting-house, or any part of any factory or mill, (excepting such part or parts as may be used for manufacturing processes) (d). And if any constable or peace officer shall be required by any inspector to perform any continuous service, it shall be lawful for such inspector to allow a special recompence to such constable or peace officer for such service: Provided nevertheless, that any such orders may be altered or disallowed by one of His Majesty's Principal Secretaries of State, on complaint made to him by memorial from any party interested.

20. *Children in factories to attend a school.*] And be it further enacted, That from and after the expiration of 6 months from the passing of this Act (29th of August, 1833), every child herein-before restricted to the performance of 48 hours of labour in any one week (e) shall, so long as such child shall be within the said restricted age, attend some school to be chosen by the parents or guardians of such child, or such school as may be

(a) It is at least very doubtful whether an inspector can now require anything not provided in the register set forth in sched. B. to 7 & 8 Vict. c. 15, *post*, p. 87.

(b) See as to the procuring of information from the registers, 7 & 8 Vict. c. 15, s. 27, *post*, p. 55.

(c) See n. (a) to sect. 17, *ante*, p. 16, as to sub-inspectors.

(d) See as to the present powers of the sub-inspector, 7 & 8 Vict. c. 15, s. 3, *post*, p. 34, which removes this exception on the power of entry; see also s. 4, *post*, p. 35, as to his protection in the exercise of his office.

(e) See sect. 8, *ante*, p. 12.

appointed by any inspector in case the parents or guardians of such child shall omit to appoint any school, or in case such child shall be without parents or guardians (*a*). And it shall and may be lawful, in such last-mentioned case, for any inspector to order the employer of any such child to make a deduction from the weekly wages of such child as the same shall become due, not exceeding the rate of one penny in every shilling (*b*), to pay for the schooling of such child. And such employer is hereby required to pay the sum so deducted according to the order and direction of such inspector.

21. *Schoolmaster's voucher required.*] And be it further enacted, That after the expiration of 6 months from the passing of this Act (29th of August, 1833) it shall not be lawful to employ or continue to employ in any factory or mill any child restricted by this Act to the performance of 48 hours of labour in any one week (*c*), unless such child shall, on Monday in every week next after the commencement of such employment, and during every succeeding Monday or other day appointed for that purpose by an inspector, give (*d*) to the factory master or proprietor, or to his agent, a schoolmaster's ticket or voucher, certifying that such child has for two hours (*e*) at least for 6 out of 7 days of the week next preceding attended his school, excepting in cases of sickness, to be certified in such manner as such inspector may appoint (*f*), and in case of any holiday, and in case of absence from any other cause allowed by such inspector, or by any justice of the peace in the absence of the inspector; and the said last-mentioned ticket shall be in such form as may be settled by any inspector.

22. *Means of providing additional schools.*] And be it further enacted, That wherever it shall appear to any inspector that a new or additional school is necessary or desirable to enable the children employed in any factory to obtain the education required by this Act, such inspector is hereby authorized to establish or procure the establishment of such school (*g*).

(*a*) See the provisions for attendance at school in 7 & 8 Vict. c. 15, ss. 31, 32, *post*, p. 58; and see *Ryder v. Mills*, 3 Exch. 906; S. C. 19 L. J. 82, M. C.

(*b*) The 7 & 8 Vict. c. 15, s. 30, *post*, p. 63, empowers the inspector to order payment to be made in any case.

(*c*) See sect. 8, *ante*, p. 12.

(*d*) The 7 & 8 Vict. c. 15, s. 30, *post*, p. 63, requires the mill-occupier to procure the school certificate.

(*e*) Three hours' attendance will be required henceforth in *spring, summer, and autumn*, and two and a half-hours in *winter*. See 7 & 8 Vict. c. 15, s. 32, *post*, p. 62, which, however, exempts Saturday, and consequently the attend-

ance is only now required on 5 days in each week.

(*f*) See as to the school certificate, 7 & 8 Vict. c. 15, ss. 31, 30, and sched. (A.), *post*, p. 83.

(*g*) This clause was inoperative, as no means were supplied to the inspectors by which they could establish the school, except by the application of penalties under s. 43, *post*, p. 26. Of late years the penalty fund has been the means of materially assisting several schools. In Mr. Redgrave's district, no less a sum than 60*l.* is produced every half-year by penalties alone. See report to April, 1855, p. 40. See 7 & 8 Vict. c. 15, s. 66, *post*, p. 76.

23. *Inspector may disallow order for salary, if schoolmaster or schoolmistress incompetent.*] And be it further enacted, That if upon any examination or inquiry any inspector shall be of opinion that any schoolmaster or schoolmistress is incompetent or in any way unfit for the performance of the duties of that office, it shall and may be lawful for such inspector to disallow and withhold the order for any payment or any salary to such schoolmaster or schoolmistress as herein-before provided (a).

24. *Mill-owner liable to penalty for child remaining on the premises more than 9 hours.*] And be it further enacted, That if any child within the several ages herein-before restricted to the performance of 9 hours of day labour (b) shall be kept or allowed to remain in any room or place whatsoever where any machinery is used, or shall be kept or allowed to remain on any premises within the outer walls of any factory or mill, for any longer time than 9 hours during any one day, or for any longer time than the residue of such 9 hours in the case of any child which has been previously employed for any shorter time during the same day in any other factory or mill : the occupier of such factory or mill shall, without any evidence of the employment of such child, be liable to the same penalty and punishment as for employing such child for such longer period (c).

Proviso as to playgrounds and schools.] Provided nevertheless, that no place, yard, or playground open to the public view shall be considered part of the premises on which children shall not be allowed to remain beyond the hours herein-before stated.

And be it further provided, that the children may be allowed to remain in any schoolroom attached to such factory or mill, or in any other waiting-room or parts of the premises where no machinery is used, and which shall at all times be open to the inspection of any mill-warden or peace-officer (d) duly appointed under the provisions of this Act.

25. *Notices by inspectors.*] And be it further enacted, That notice of any general order or regulation (e) applying to more than one mill or factory, made by any inspector, if published for 2 successive weeks in one or more newspapers published in the town, place, or county where any such mill or factory is situate, shall in all cases, at the end of 7 days after the 2nd publication thereof, have the same effect in attaching a responsibility upon any offender against such order or regulation as a notice personally served upon such offender : Provided nevertheless, that such

(a) By sect. 20, *ante*, p. 18. See the provision in stat. 7 & 8 Vict. c. 15, s. 39, *post*, p. 64, as to the annulling of the schoolmaster's certificate.

(b) See sect. 8, *ante*, p. 12.

(c) See sects. 29, 31, *post*, p. 22.

(d) Neither this nor any subsequent Act makes provision for any such officers.

(e) See sect. 18, n. (c), *ante*, p. 18, and 7 & 8 Vict. c. 15, s. 2, *post*, p. 38.

notice shall not be to the exclusion of any other special notice which any inspector may deem expedient or proper.

26. *Interior walls of every mill, &c. to be limewashed.*] And be it further enacted, That the interior walls (except such parts as are painted), of every mill or factory or building where the process of manufacturing is carried on, shall be limewashed, and the ceilings of all rooms which have rooms or lofts above them, and all ceilings which are plastered, shall be whitewashed once every year (a), unless permission to the contrary, in writing, be granted by any inspector (b).

27. *An abstract of this Act, and such rules and regulations as any inspector may determine, shall be hung up in mills.*] And be it further enacted, That a copy or copies of such abstract of this Act, and also such copy or copies of any regulation or regulations made in pursuance of this Act, as any inspector shall direct, shall be hung up and affixed in a conspicuous part or in the several departments of every mill or factory. And such copy or copies of such abstract and of such rules or regulations, so hung up and affixed, shall be signed by the master or manager or overseer of such mill or factory. And such copy or copies shall be renewed by such master, manager, or overseer, so often as any inspector may direct (c).

28. *Punishment for forgery of certificates.*] And be it further enacted (d), That if any person shall give, sign, countersign, endorse, or in any manner give currency to any false certificate, knowing the same to be untrue, or if any person shall forge any certificate, or shall forge any signature or endorsement on any certificate, or shall knowingly and wilfully give false testimony upon any point material to any certificate of any inspector or schoolmaster, such person shall be deemed guilty of a misdemeanor, and shall, on conviction thereof before any inspector or justice, be liable to be imprisoned for any period not exceeding 2 months in the house of correction in the county, town, or place where such offence was committed (e).

(a) See note (b) to 43 G. 3, c. 73, s. 2, *ante*, p. 2, and for non-reparation, see 7 & 8 Vict. c. 15, s. 18, *post*, p. 43.

(b) The permission herein referred to cannot now be granted by the inspector, see 7 & 8 Vict. c. 15, s. 18, *post*, p. 43. Certain humane directions have been issued by the inspectors as to the age and dress of persons engaged in these employments, and also as to the times when such repairs should take place, see 7 & 8 Vict. c. 15, s. 21, n. (s), *post*, p. 44.

Prosecutions have been successfully instituted for neglecting to limewash

factories according to law, and heavy fines and costs inflicted.

(c) See stat. 43 G. 3, c. 73, s. 12, *ante*, p. 12. But see 7 & 8 Vict. c. 15, s. 28, *post*, p. 53, and 13 & 14 Vict. c. 54, s. 2, *post*, p. 102, whereby this clause is very much modified, and in fact almost repealed.

(d) See 7 & 8 Vict. c. 15, s. 40, *post*, p. 65.

(e) The punishment under this clause is now discretionary as to fine or imprisonment, see 7 & 8 Vict. c. 15, s. 68, *post*, p. 75.

the commission of such offence to the party or parties complained against.

Proviso as to penalties.] Provided always, that no more than one penalty for a repetition of the same offence shall be recoverable, except after the service of the written notice as aforesaid (a).

36. *In case of partnerships, one name sufficient for summons, &c.*] And be it further enacted, That it shall not be deemed necessary in any summons or warrant, issued in pursuance of this Act, to set forth the name or other designation of each and every the partners in any such mill or factory, but that it shall be lawful to insert in such summons or warrant the name of the ostensible occupier or title of the firm by which the occupier or occupiers employing the workpeople of every such mill or factory are usually designated and known (b).

37. *Service of summons.*] And be it further enacted, That the service of such summons or warrant on any occupier, principal manager, conductor, or agent of any such mill or factory, shall be good and lawful service.

38. *Inspectors and justices may summon witnesses to appear and give evidence, and on neglect may commit to prison.*] And be it further enacted, That it shall be lawful for the inspectors or any of them, or for any justice of the peace, upon any complaint, or upon any investigation under this Act, without any complaint, to administer an oath to any witness (c), and to summon any witness forthwith to appear and give evidence before him or them, or at a time and place appointed for hearing such complaint or making such investigation, or to order such witness to be brought before him by any constable or peace officer.

And if such witness shall not appear according to such summons, proof upon oath having been given of the due service of such summons, or shall resist such constable or peace officer, or shall not submit to be examined as a witness, it shall be lawful for such inspectors and justices by warrant under their hand and seal, to commit such person for such non-appearance, resistance, or non-submission to the county prison, or prison of the place where such offence was committed, there to remain without bail or mainprize for any time not exceeding 2 calendar months (d).

39. *Proviso for discharging them on sufficient excuse or compliance.*] Provided nevertheless, and be it enacted, That, except in the case of resistance to any constable or peace officer, it shall

(a) As to the repetition of offences, see 7 & 8 Vict. c. 15, ss. 44 & 66, *post*, p. 68, and sect. 40, which repeals most of the provisions of this Act as to penalties.

(b) See stat. 7 & 8 Vict. c. 15, s. 51, as to the name in the summons and its service; and see sect. 46, *post*, p. 68.

(c) See also the power given to the inspector to administer an oath by sect. 17, *ante*, p. 17.

(d) See stat. 7 & 8 Vict. c. 15, s. 49, *post*, p. 69. By 11 & 12 Vict. c. 43, s. 35, proceedings under the 'Factory Acts' are excepted from the operation of that statute.

be lawful for the inspector or justice by whom such person shall have been committed to discharge such person from prison, if such person shall show any cause to such inspector or justice which shall be deemed satisfactory as an excuse for such non-appearance, or if such person shall afterwards submit himself to be examined to the satisfaction of such inspector or justice. And the order of such inspector or justice for such discharge shall be a sufficient warrant to any gaol or prison-keeper (a).

40. *Convictions to be filed amongst records of county.*] And be it further enacted, That every conviction under this Act before any inspector or justice, may be made according to the form in the schedule to this Act annexed (b); which conviction shall be certified to the next general quarter sessions, there to be filed amongst the records of the county, riding, or division, and shall have the force of an act of record, whether the same shall be by an inspector or by a justice of the peace for such county, riding or division. And no conviction or other proceeding of any inspector or justice under this Act shall be deemed illegal for any mere informality (c).

41. *Inspector or justice may commit to prison for two months in case payment of penalty is refused or distress is insufficient.*] And be it further enacted, That if any person who shall have been sentenced or adjudged to pay any penalty or forfeiture under this Act shall neglect or refuse to pay the same, it shall be lawful for the inspector or magistrates before whom such person shall have been convicted to issue his warrant to distrain the goods and chattels of such person.

And if no sufficient distress shall be found, it shall be lawful for the said inspector or magistrates, upon such fact being certified by the constable having the execution of such distress warrant, to commit such person to the house of correction or common gaol of the town, county, or place where such offence was committed for any time not exceeding 2 months (d). And the said warrant of distress, commitment, and certificate of the constable may be in the forms contained in the schedule to this Act annexed (e).

42. *As to appeal against convictions.*] And be it further enacted, That no appeal against any conviction under this Act shall be allowed, except in the case of a conviction for the forgery of any certificates, vouchers, or other documents required

(a) See stat. 7 & 8 Vict. c. 15, s. 40, *post*, p. 69.

(b) See schedule, *post*, p. 28. These forms can be obtained of Messrs. Shaw, Fetter Lane, London, the publishers of this volume.

(c) See stat. 7 & 8 Vict. c. 15, s. 68, *post*, p. 77.

(d) See stat. 4 & 5 W. 4, c. 1, s. 1, *post*, p. 31.

(e) This clause appears to be a re-iteration of sect. 34, *ante*, p. 33, with some alteration, it is however repealed by 7 & 8 Vict. c. 15, s. 40, *post*, p. 33.

by this Act, or by any inspector under the authority of this Act, neither shall any conviction, (except in the case herein last excepted,) be removed by certiorari or bill of advocation into any court whatever (c).

43. *Application of penalties.—Restriction as to penalties.—Summons.*] And be it further enacted, That any justice or inspector by whom any complaint under this Act is determined shall (if he so thinks fit) give to the complainant or prosecutor one-half of any penalty imposed for any offence against any of the provisions of this Act, together with all costs of prosecution and conviction, and the remainder of the penalty (or the whole if he shall think fit) shall be applied as such justice or inspector may direct for the benefit of any school (d) wherein children employed in mills or factories are educated in such township or place where such offence shall be committed (e).

Provided always, that only one penalty shall be recoverable for any one description of offence from any one person for any one day (f), and that it shall not be deemed necessary for the complainant or prosecutor to name in any summons the particular township in which such offence shall have been committed, but it shall be lawful to set forth in such summons the name of the parish where such offence may have been committed (g). Provided always, that such summons shall be issued upon complaint being made upon oath (h).

44. *Inspector may order constable to provide a convenient place for holding sittings.*] And be it further enacted, That every inspector shall be, and is hereby authorized to order any constable or peace officer to provide for such inspector a convenient place for holding any sitting; and the expense of providing such place shall be defrayed in the manner and proportions and by the person, or persons herein appointed for the payment of any special remuneration to any constable or peace officer (i).

45. *Inspectors to make half-yearly reports.—Proceedings of inspectors required to be uniform.*] And be it further enacted, That every inspector shall keep full minutes of all his visits and proceedings, and shall report the same to one of His Majesty's

(c) See stat. 42 G. 3, c. 78, s. 15, *ante*, p. 15, and 7 & 8 Vict. c. 15, ss. 69, 70, *post*, p. 77.

(d) See sect. 22, n. (g), *ante*, p. 19.

(e) See stat. 7 & 8 Vict. c. 15, s. 66, which, to some extent, alters the application of the penalties, see *post*, p. 76.

(f) See stat. 7 & 8 Vict. c. 15, s. 44, *post*, p. 68.

(g) See stat. 7 & 8 Vict. c. 15, s. 60, *post*, p. 78.

(h) See stat. 7 & 8 Vict. c. 15, s. 46, *post*, p. 68, which enables an inspector or sub-inspector to make complaint in writing, and any other person to make complaint on oath.

(i) This section refers to sect. 19, *ante*, p. 18, but it will be seen that there is no statement of the fund out of which the recompence alluded to is to be paid.

Principal Secretaries of State twice in every year, and oftener if required (k).

And shall also report the state and condition of the factories or mills and of the children employed therein, and whether such factories or mills are or are not conducted according to the directions of this Act and of the laws of the realm.

And whereas it is expedient that the proceedings, rules, orders, and regulations of the several inspectors appointed under this Act should be as nearly alike as is practicable under all circumstances :

Therefore such inspectors are hereby required within 3 months next after they shall have commenced the execution of their several duties and powers under this Act, and twice at least in every year afterwards, to meet and confer together respecting their several proceedings, rules, orders, regulations, duties, and powers, under this Act, and at such meeting to make their proceedings, rules, orders, and regulations as uniform as is expedient and practicable (l). And such inspectors are hereby required to make and keep full minutes of such meetings, and to report the same to such Secretary of State when they make the report herein-before required (m).

46. *Burgh magistrates in Scotland to exercise same powers as justices of peace in England.*] And be it further enacted, and it is hereby declared, That in all cases in which any justices or justice of the peace are or is required to act or do anything in any manner under this Act, or are or is named therein, and whenever the subject matter of any one of the enactments or provisions of this Act shall arise within that part of the united kingdom called *Scotland*, the burgh magistrates shall be held to have and shall have within the limits of their own jurisdiction the same powers, duties, and authorities, and which they are hereby required to exercise, as are by this Act conferred upon the said justices of the peace, and are required to be exercised by them (n).

47. *Act not to extend to persons on repairs.*] Provided always, and be it enacted, That nothing in this Act contained shall apply to mechanics, artisans, or labourers under the prescribed ages working only in repairing the machinery or premises (o).

48. *The Act 1 & 2 W. 4, c. 39, repealed, except as it repeals any other Acts.*] And be it further enacted, That after

(k) The inspectors have made separate reports quarterly, but lately the reports are made half yearly, and their contents are very valuable.

(l) See stat. 7 & 8 Vict. c. 15, s. 2, *post*, p. 33, respecting their power.

(m) The inspectors, in order to satisfy

this section, make a joint half yearly report at the same time each makes his separate report.

(n) See a similar provision stat. 7 & 8 Vict. c. 15, s. 71, *post*, p. 79.

(o) The stat. 7 & 8 Vict. c. 15, s. 73,

the 1st of January, 1834, the Act passed in the 1st and 2nd years of the reign of his present Majesty, intituled *An Act to amend (p) the Laws relating to Apprentices and other Persons employed in Cotton Mills, and to make further Provisions in lieu thereof*, shall be repealed, and the same is hereby repealed, except as to any Act or Acts repealed by the same (q).

49. *Construction of terms.*] And be it further enacted, That any words in this Act denoting the masculine gender shall be construed to extend to persons of either sex. And any words denoting the singular number shall be construed to extend to any number of persons or things, if the subject matter or context shall admit of such an interpretation, unless such construction shall be in express opposition to any other enactment (r).

50. *Public Act.*] And be it further enacted, That this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, justices, and others.

The SCHEDULE to which this Act refers (s).

Form of Conviction (t).

County of — [Town of —, } Be it remembered, That on the
as the fact may be] to wit. } — day of —, in the year
—, A. B. [describe the offender] was, upon the complaint of
C. D. [or upon the view of C. D., one of His Majesty's inspec-
tor of factories], convicted before E. F., one of His Majesty's
inspectors of factories, or justices of the peace of and for, &c.,
[as the case may be], in pursuance of an Act passed in the

post, pp. 80, 82, confines this exemption to persons employed in making and repairing the machinery or any part of the factory; and the definition of employed extends to persons cleaning any part of the factory, or oiling and greasing any part of the machinery.

See 7 & 8 Vict. c. 15, s. 21, n. (s), as to the government requirements as to persons cleaning machinery.

(p) The word should be *repeal*.

(q) This stat. 1 & 2 W. 4, c. 39, repealed all former statutes on this subject, except the statute 42 G. 3, c. 73, ante, p. 1. The repealed statutes were 30 G. 3, c. 66; 60 G. 3, c. 5; 6

G. 4, c. 68; 10 G. 4, c. 51, and 10 G. 4, c. 68.

(r) For the construction of this Act with subsequent Acts, see n. (a), ante, p. 9.

(s) All the forms contained in this schedule, as amended and modified by the stat. 7 & 8 Vict. c. 15, p. 83, can be obtained of Messrs. Shaw, Fetter Lane, London.

(t) See the form of conviction given by stat. 7 & 8 Vict. c. 15, s. 68, and sched. D., post, p. 96. By 11 & 12 Vict. c. 43, s. 35, proceedings under the Factory Acts are excluded from the operation of that statute.

fourth year of the reign of His Majesty King William the Fourth, for [*describe the offence*]. Given under my hand and seal the day and year above mentioned.

Warrant to distrain for Forfeiture (u).

To the constable, &c.

County of — } Whereas A. B. of —, in the said county, is
to wit. } this day convicted before me C. D., one of
His Majesty's inspectors of factories, [or justices of the peace
in and for the said county,] upon the oath of a credible witness,
[or upon my own view, *as the case may be*,] for that he the said
A. B. hath [*here set forth the offence, describing it particularly
in the words of the statute or rule, as near as can be*], contrary
to the statute [or rule, *if the offence is against some rule
or regulation or order of an inspector*,] in that case made and
provided, by reason whereof the said A. B. is adjudged to have
forfeited the sum of —l., to be distributed as hereinafter men-
tioned: these are therefore in His Majesty's name to command
you to levy the said sum of —l., by distress of the goods and
chattels of him the said A. B.; and if within the space of four
days next after such distress by you taken, the said sum of —l.,
together with the reasonable charges of taking and keeping the
same, shall not be paid, that then you do sell the said goods and
chattels by you so distrained, and out of the money arising by
such sale that you do pay [*according to the award of the jus-
tices*], returning the overplus, on demand, to him the said A. B.,
the reasonable charges of taking, keeping, and selling the said
distress being first deducted; and if sufficient distress cannot be
found on the goods and chattels of the said A. B. whereon to
levy the said sum of —l., that then you certify the same to
me, together with this warrant. Given under my hand and seal
the — day of —.

C. D.

*Return of Constable upon Warrant of Distress where no
Effects.*

I, A. B., constable of —, in the county of —, do hereby
certify and make oath, that by virtue of this warrant I have made

(u) No form of warrant is supplied by the new statute, and this is no longer applicable. By 11 & 12 Vict. c. 43, s. 36, proceedings under the Factory Acts are excluded from the operation of that statute.

diligent search for the goods of the within-named —, and that I can find no sufficient goods whereon to levy the same. As witness my hand, the — day of —.

A. B.

Sworn before me the day and year —.

C. D.

Commitment for want of Distress (x).

County of — } To the constable of —, in the county of
to wit. } —, and to the keeper of the common gaol
[or house of correction], at —, in the said county.

Whereas *A. B.* of —, in the said county, was, on the — day of —, convicted before me, *C. D.*, Esquire, one of His Majesty's justices of the peace, in and for the said county, [or inspector of factories, *as the fact may be,*] upon the oath of a credible witness, [or upon my own view, *as the case may be,*] for that he [here set forth the offence], contrary to the statute made in the — year of the reign of His Majesty King William the Fourth, for [according to the title of the Act, or contrary to a certain rule or order or regulation of His Majesty's inspectors of factories,] and the said *A. B.*, by reason thereof, hath been adjudged to forfeit and pay the sum of —: and whereas on the — day of —, in the year aforesaid, I did issue my warrant to the constable of —, to levy the said sum of — by distress and sale of the goods and chattels of him the said *A. B.*; and to distribute the same as in my said warrant was mentioned: and whereas it duly appears to me, upon the oath of the said constable, that he hath used his best endeavours to levy the said sum on the goods and chattels of the said *A. B.*, but that no sufficient distress can be had whereon to levy the same: these are therefore to command you, the said constable of — aforesaid, to apprehend the said *A. B.*, and him safely to convey to the common gaol [or house of correction] at —, in the said county, and there deliver him to the keeper thereof, together with this precept; and I do also command you the said keeper to receive and keep in your custody the said *A. B.* for the space of —, unless the said sum shall be sooner paid, pursuant to the said conviction and warrant; and for so doing this shall be your sufficient warrant. Given under my hand and seal, the — day of —.

C. D.

(x) This form cannot now be used with safety. See 7 & 8 Vict. c. 15, s. 68, post, p. 77. By 11 & 12 Vict. c. 48, s. 35, proceedings under the Factory Acts are excluded from the operation of that statute.

The Factory Amendment Act, 1834.

4 & 5 WILL. 4, c. 1.

An Act to explain and amend an Act of the last Session of Parliament for regulating the Labour of Children and young Persons in the Mills and Factories of the United Kingdom (a). [20th February, 1834.]

WHEREAS by the stat. 3 & 4 W. 4, c. 103, intituled *An Act to regulate the Labour of Children and young Persons in the Mills and Factories of the United Kingdom*, it was enacted among other things that certain provisions of the said Act should come into operation at the end of 18 months, and certain other provisions also at the end of 30 months after the passing of the said Act (b). And it is expedient that the periods mentioned in the said provisions respectively should be construed to be calendar months, not lunar months: be it therefore enacted (c),

1. *The word months in recited Act to be construed as calendar months.*] That the said periods of 18 months and 30 months mentioned in the said Act shall be construed and taken to mean periods of 18 calendar months and 30 calendar months respectively.

2. *In silk mills children under 13 years of age allowed to work 10 hours every working day.*] And whereas it is provided by the said Act, that in mills for the manufacture of silk, children under the age of 13 years shall be allowed to work 10 hours in any one day (d); and doubts have arisen whether, according to the true construction of the said Act, children in

(a) This Act, together with the 3 & 4 W. 4, c. 103, *ante*, p. 8, n. (a); the 7 & 8 Vict. c. 15, *post*, p. 33; the 10 & 11 Vict. c. 59, *post*, p. 100; the 13 & 14 Vict. c. 54, *post*, p. 106; and the 16 & 17 Vict. c. 104, s. 5, *post*, p. 109, are to be construed as one Act. See *R. v. Fell*, 1 B. & Ad. 380, as to the construction of several Acts directed to be construed as one Act.

(b) The Act was passed on 29th August, 1833. The provisions referred to are contained in sects. 8, 11, 14, *ante*, pp. 12, 13, 14.

(c) See stat. 3 & 4 W. 4, c. 103, s. 8, *ante*, p. 12.

(d) See stat. 3 & 4 W. 4, c. 103, s. 8, *ante*, p. 12.

such mills can be allowed to work 10 hours every working day in the week; be it therefore further enacted,

That in mills for the manufacture of silk, children under the age of 13 years shall be allowed to work 10 hours every working day in the week (e); and that this enactment shall be substituted in the place of the provision hereinbefore referred to, and be taken in all respects as part of the said Act.

(e) By stat. 7 & 8 Vict. c. 15, s. 72, labour generally, see 7 & 8 Vict. c. 15, *post*, p. 79, children employed solely *post*, p. 83; 10 & 11 Vict. c. 29, *post*, p. 96; 13 & 14 Vict. c. 54, *post*, p. 101; are not to work after half-past 4 p.m. and 16 & 17 Vict. c. 104, *post*, p. 107. of any Saturday. As to the hours of

The Factories Regulation Act, 1844.

7 & 8 VICT. c. 15.

An Act to amend the Laws relating to Labour in
Factories (a). [6th June, 1844.]

WHEREAS the laws relating to labour in factories require to be amended; be it enacted,

1. *Commencement of Act.*] That this Act shall take effect from the 1st day of October, 1844, except any provisions for the taking effect of which any other time shall be hereinafter specially limited, all which last-mentioned provisions (b) shall take effect from and after such time as shall be hereinafter specially mentioned in that behalf.

2. *Restriction on power of inspectors and sub-inspectors, 3 & 4 W. 4. c. 103. Their exemption from certain duties.*] And be it enacted, That after the 6th of June, 1844, no inspector of factories shall have power in that capacity to act as a magistrate, or to make rules, regulations, and orders as authorized by an Act hereinafter called "the Factory Act," 3 & 4 W. 4, c. 103, intituled *An Act to regulate the Labour of Children and young Persons in the Mills and Factories of the United*

(a) In construing this Act reference should be made to the interpretation clause, s. 73, *post*, p. 80; also to 10 & 11 Vict. c. 29, s. 4, *post*, p. 100; 13 & 14 Vict. c. 54, s. 9, *post*, p. 106, and 16 & 17 Vict. c. 104, s. 5, *post*, p. 109.

By the *Ropeworks Exemption Act*, 9 & 10 Vict. c. 40, *post*, p. 97, certain ropeworks are exempted from the operation of this Act.

Print Works are governed by Acts of parliament having special and exclusive application to them. The printworks regulation Acts being the 8 & 9 Vict. c. 29, and 10 & 11 Vict. c. 70.

This Act, together with the 3 & 4 W. 4, c. 103, *ante*, p. 9; the 4 & 5 W. 4, c. 1, *ante*, p. 31; the 10 & 11 Vict. c. 29, (s. 4), *post*, p. 100; the 13 & 14 Vict. c. 54, (s. 9), *post*, p. 106, and the 16 & 17 Vict. c. 104, (s. 5), *post*, p. 109, are to be construed as one Act.

See *R. v. Fell*, 1 B. & Ad. 360, as to the construction of several Acts directed to be construed as one Act.

(b) The excepted provisions will be found in sects. 2, 7, 15, 18, & 19, *post*. But at the present day most of the above exceptions have ceased to be such.

Kingdom (c), except as hereinafter mentioned (*d*), and that no inspector or person appointed to superintend the execution of the provisions of the Factory Act and of this Act, under the direction of an inspector, hereinafter called a sub-inspector (*e*), shall be liable to serve upon any jury, or to serve any parochial or municipal office, so long as he shall continue to hold the office of inspector or sub-inspector.

3. *Power of inspectors and sub-inspectors.*] And be it enacted, That every inspector and sub-inspector shall have power to enter every part of any factory at any time, by day or by night, when any person shall be employed therein, and to enter by day any place which he shall have reason to believe to be a factory (*f*), and to enter any school (*g*) in which children employed in factories are educated, and at all times to take with him into any factory the certifying surgeon of the district hereinafter mentioned (*h*), and any constable or other peace officer whom he may need to assist him (*i*), and shall have power to examine, either alone or in the presence of any other person, as he shall think fit, every person whom he shall find in a factory or in such a school, or whom he shall have reason to believe to be or to have been employed in a factory within 2 months next preceding the time when he shall require him to be examined touching any matter within the provisions of this Act, and the inspector or sub-inspector may, if he shall see fit, require such person to make and sign a declaration of the truth of the matters respecting which he shall have been or shall be so examined.

And every inspector and sub-inspector shall have power (*j*) to examine the registers, certificates, notices, and other documents kept in pursuance of this Act.

And every person who shall refuse to be examined as aforesaid, or who shall refuse to sign his name or affix his mark to a declaration of the truth of the matters respecting which he shall have been examined, or who shall in any manner attempt

(c) In the stat. 3 & 4 W. 4, c. 103, ss. 17, 18, *ante*, p. 16, are contained the regulations for the appointment of the inspectors and their powers. By 7 & 8 Vict. c. 15, s. 6, *post*, p. 35, the Secretary of State can regulate the conduct and duties of the inspectors and sub-inspectors and their clerks, so long as his regulations are not contrary to this statute.

(d) Thess. 6, 8, 16, *post*, pp. 35, 36, 38, appear to contain the only instances wherein the inspectors can now make regulations. As to how notice of rules, &c. may be given, see 3 & 4 W. 4, c. 103, s. 35, *ante*, p. 20.

(e) Sub-inspectors are appointed under stat. 3 & 4 W. 4, c. 103, s. 19, *ante*, p. 18.

(f) See sect. 73, *post*, p. 80, for the exact meaning of this term.

(g) The stat. 3 & 4 W. 4, c. 103, ss. 17, 19, are much extended by this clause.

(h) See sect. 8, *post*, p. 36.

(i) See 3 & 4 W. 4, c. 103, ss. 19, 33, *ante*, pp. 18, 23.

(j) This clause does not empower the inspector or sub-inspector to administer an oath, but the 3 & 4 W. 4, c. 103, ss. 17, 38, authorized the former to do so, which power is not taken away. Sect. 63, *post*, p. 75, provides a penalty or fine or imprisonment upon persons wilfully making a false declaration.

to conceal or otherwise prevent any child or other person from appearing before or being examined by an inspector or sub-inspector, or who shall prevent or knowingly delay the admission of an inspector or sub-inspector to any part of a factory or school, or shall prevent an inspector or sub-inspector from examining (k) any register, certificate, notice, or other document kept in pursuance of this Act, shall be deemed guilty of wilfully obstructing (l) the inspector or sub-inspector in the execution of the powers intrusted to him.

4. *Protection of inspectors and sub-inspectors.* 24 G. 2, c. 44.] And be it enacted, That the provisions of 24 G. 2, c. 44, intituled *An Act for the rendering Justices of the Peace more safe in the Execution of their Office, and for indemnifying Constables and others acting in obedience to their Warrants*, as amended by any subsequent Act, so far as they relate to rendering justices of the peace more safe in the execution of their office, shall extend to protect the inspectors and sub-inspectors in the exercise of their duties under this Act (m).

5. *Office of factory inspectors.*] And be it enacted, That a proper office, to be called "The Office of the Factory Inspectors," shall be provided in *London or Westminster* for the use of the inspectors, and for the preservation of the factory records, and all documents relating to the several proceedings under this Act.

And one of Her Majesty's principal secretaries of state shall appoint from time to time such clerks and servants as may be deemed necessary to carry on the business of the said office, and may at pleasure remove them or any of them. And the commissioners of Her Majesty's Treasury of the United Kingdom of *Great Britain and Ireland* shall fix the salaries of the clerks and servants in fit proportion according to the duties they may have to perform.

6. *Management of the office, and regulating the duties of the inspectors, &c.*] And be it enacted, That one of Her Majesty's principal secretaries of state, or the inspectors, with the approval of such principal secretary, from time to time may make regulations for the management of the said office, and for regulating the duties of the several inspectors and sub-inspectors, and of the clerks and servants of the said office, in the execution

(k) See sect. 27, *post*, p. 53.

(l) As to which, and the penalties attached, see sects. 61 & 62, *post*, p. 74.

(m) This statute 24 G. 2, c. 44, has been considerably modified by stat. 5 & 6 Vict. c. 97, which renders the law uniform with respect to notice of action

in all cases in which such notice is required, and makes the notice to be given to be of *one calendar month's* duration. The month begins to run with the day on which notice is served. *Castle v. Burdet*, 3 D. & E. 623. See 2 Chit. on Pl., p. 1, 7th edition.

of this Act (n), so that they be not contrary to the provisions herein contained (n), and the regulations so made and approved shall be binding on the said inspectors and sub-inspectors, clerks, and servants respectively.

7. *Persons beginning to occupy a factory to send notice to the office of factory inspectors.*] And be it enacted, That after the 6th of June, 1844, every person, on beginning to occupy a factory, shall within one month send, addressed "To the Office of the Factory Inspectors, London," a written notice (o), containing the name of the factory, the place, township, parish, and county where it is situated, the post office to which he desires his letters to be addressed, the nature of the work, the nature and amount of the moving power, and the name of the firm under which the business of the factory is to be carried on (p).

8. *Certifying surgeons to be appointed by an inspector.*] And be it enacted, That after the passing of this Act, 16th of June, 1844, any inspector shall have power to appoint a sufficient number of persons practising surgery or medicine to be certifying surgeons, for the purpose of examining persons who shall be brought before them to obtain the surgical certificates of age required by the Factory Act and by this Act (q), and of giving the said certificates (r), and shall from time to time make regulations for their guidance, and shall in every such appointment specify the factories or district for which each surgeon is appointed, and may from time to time annul any such appointment, and in like manner make another or others.

But every appointment of a certifying surgeon, and every order annulling such appointment, may be revoked by the secretary of state, on appeal made to him for either purpose.

And the inspector of the district shall make known the name of the certifying surgeons so from time to time appointed or discontinued to the occupiers of the factories in that district in such manner as to him shall seem fit. But no surgeon (s), being the occupier of a factory, or having a beneficial interest in any factory, shall be a certifying surgeon.

(n) By the 73rd clause, *post*, p. 80, the 'Factory Act' is incorporated with this Act. Consequently the provisions in stat. 3 & 4 W. 4, c. 103, *ante*, p. 9, cannot be contravened by any order of the secretary of state.

(o) Forms of this notice may be obtained of Messrs. Shaw, Fetter Lane, London, the publishers of this volume.

(p) No penalty is annexed for the omission to send 'as the

omission is an offence against this Act, it would seem that the case falls within s. 64, *post*, p. 75. Besides, the offender may be indicted for the misdemeanor of disobeying a provision of an Act of parliament.

(q) See ss. 11, 12, & 14, *post*, p. 37.

(r) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(s) A physician or apothecary, not being a surgeon, would not come within the words of this prohibition.

9. *Form of surgical certificate.*] And be it enacted, That the certificates of age required by the Factory Act (t), or by this Act, herein called surgical certificates, shall be given according to the form and directions contained in the schedule (A.) (u) annexed to this Act.

And the certificates given by any such certifying surgeon shall be as valid as if countersigned (v) by an inspector, justice of the peace, or burgh magistrate.

And the name of every person for whom a certificate of age is required by the Factory Act (w) or by this Act, and the date of the first day of employment or re-employment of such person, shall be registered in the form and according to the directions given in the schedule (B.) annexed to this Act (x), before it shall be lawful to employ such person in a factory.

Provided also, that no surgical certificate shall be required for any young person above the age of 16 years (y).

10. *Certificates not given by certifying surgeon must be by persons duly authorized, and countersigned by a magistrate.*] And be it enacted, That no such surgical certificate given by any person who is not an appointed certifying surgeon shall be of any force, unless it is given by a person duly authorized by an university or college, or other public body having authority in that behalf, to practise surgery or medicine, and countersigned, according to the form and directions given in the schedule (A.) to this Act annexed (a), by some justice of the peace, not being the occupier of a factory, and not being the father, son, or brother of the occupier of a factory (b).

And no person shall countersign any such surgical certificate in the absence of the person named therein, or without proof that the person brought before him is the same to whom the certificate was granted.

11. *Surgical certificates to be given at the factory.*] And be it enacted, That no person shall grant any surgical certificate required by the Factory Act (c) or by this Act, except upon personal inspection of the person named therein (d).

(t) See 3 & 4 W. 4, c. 103, ss. 11, 12, 13, & 14, *ante*, pp. 13, 14.

(u) See the schedule, *post*, p. 83. Printed forms of these certificates may be obtained of Messrs. Shaw, Fetter Lane, London, the publishers of this volume.

(v) This countersignature was required by 3 & 4 W. 4, c. 103, s. 12, *ante*, p. 14.

(w) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(x) Forms of this register may be obtained of Messrs. Shaw, Fetter Lane, London, the publishers of this volume.

(y) The stat. 3 & 4 W. 4, c. 103, s.

14, required the certificate up to the age of eighteen.

(a) Forms of this certificate may be obtained of Messrs. Shaw, Fetter Lane, London, the publishers of this volume.

(b) See note (f) to s. 71, *post*, p. 79. It may be observed that the schedule extends this restriction upon the justice, by preventing any person having a beneficial interest in a factory from countersigning.

(c) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(d) The 3 & 4 W. 4, c. 103, s. 12, *ante*, p. 14, also requires a personal inspection. See *ante*, sec. 3, p. 33.

And no certifying surgeon shall examine any person for the purposes of this Act, or sign or issue any such surgical certificate, elsewhere than at the factory where such person is to be employed, unless for special cause, to be allowed by an inspector.

And if a certifying surgeon shall refuse to grant a certificate of age for any person presented to him for such examination, he shall give, when required, instead of such certificate, a paper specifying under his hand the reasons for such refusal, in the form and directions given in the schedule (A.) (d) to this Act annexed (e).

12. *Agreement between mill occupier and certifying surgeon.*] And be it enacted, That if the occupier of a factory shall agree in writing (f), with the certifying surgeon of a district for the payment to be made by the occupier of the factory to the certifying surgeon for the examination of persons for whom surgical certificates are required by the Factory Act (g) or by this Act, and if the terms of such agreement shall be in conformity with such regulations for the guidance of the surgeons as shall be made by the inspector of the district (h), and shall be countersigned by the inspector in token of such conformity, all penalties which may be incurred by any party for breach of such agreement may be recovered as other penalties (i) under this Act may be recovered, and shall be applied as other penalties under this Act are directed (k) to be applied, and no such agreement shall be liable to any stamp duty.

13. *Inspector may fix surgeon's fees.*] And be it enacted, That an inspector shall fix the amount of fees to be paid by the occupier of a factory, and the times when such fees shall be paid to the certifying surgeon, and also the times when such certifying surgeon shall visit a factory (l), provided he shall be required to fix such fees and visits by the occupier of a factory.

And the fees so to be fixed by the inspector shall not in any case where the surgeon shall examine more than 1 person exceed 1s. for each person who shall be presented to him at the factory by the mill owner (m) or his agent to be examined, together with 6d. for every half mile that the distance of the factory from the residence of such surgeon shall exceed 1 mile.

And such fees, including mileage, shall not be less than 1s.,

(d) Forms of this certificate may be obtained of Messrs. Shaw, Fetter Lane, London, the publishers of this volume.

(e) See schedule, *post*, p. 86.

(f) See sec. 13, *infra*.

(g) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(h) See *ante*, sec. 8, p. 36.

(i) See secs. 45, 46, *post*, p. 68.

(k) See sec. 68, *post*, p. 76.

(l) See *post*, p. 42, sec. 16, which requires the surgeon at each visit to enter certain particulars in his register.

(m) This word *owner* should have been *occupier*.

and shall in no case exceed 5*s.* for any one visit, except when upon such visit the certifying surgeon shall examine for the said certificates of age more than 10 persons who may be brought before him as aforesaid, in which case he shall receive 6*d.* for each person that he may so examine, instead of all other fees.

And in any case where a factory is situated within the distance of 1 mile from the residence of a certifying surgeon the fee for such factory shall not exceed 2*s.* 6*d.* for each visit, except when at any one visit he shall examine for the said certificates of age more than 5 persons who may be brought before him as aforesaid, in which case he shall receive 6*d.* for each person that he may so examine, instead of all other fees.

And no certifying surgeon shall receive more than 6*d.* for any certificate which he may be allowed by an inspector, as hereinbefore provided (*n*), to sign or issue otherwise than at the factory where the person is to be employed.

And the occupier of any factory shall pay such fees to the certifying surgeon at the time of signing such certificates, or at any other time when he may be directed by the inspector to do so.

And the occupier of such factory may deduct the fee or any part thereof, not exceeding in any one case the sum of 3*d.*, from the wages of the person for whom the certificate may have been granted.

But in any case where such agreement as aforesaid (*o*) has been executed between an occupier of a factory and the certifying surgeon, the amount named in such agreement shall be instead of the fees fixed by any inspector in virtue of this Act.

Provided always, that no certifying surgeon shall be required to visit any factory situated within 3 miles of his residence oftener than once in each week, or to visit any factory situated at a greater distance than 3 miles oftener than once in every fortnight, unless with the consent of the occupier of the factory.

14. *New surgical certificate not required for persons at present employed. Inspectors and sub-inspectors may annul certificates.* And be it enacted, That no person who shall be employed in a factory at the time when this Act shall come into force (1st October, 1844), under a surgical certificate granted under the Factory Act (*p*), shall be required to have a new surgical certificate, in the form and manner provided by this Act, so long as he shall continue in the same factory.

But every inspector and sub-inspector may annul any surgical certificate granted under this Act, and any surgical certificate granted before the passing of this Act (6th June, 1844), by

(*n*) See *ante*, p. 38, sec. 11.
(*o*) See sec. 12, *ante*, p. 38.

(*p*) See 2 & 4 W. 4, c. 108, s. 13,
ante, p. 14.

writing across the surgical certificate the word "annulled," with his name, and the date of annulling such certificate. Provided that in either case he shall have reason to believe the real age of the person mentioned therein to be less than that mentioned in the certificate, or provided the certifying surgeon of the district shall, upon reference made to him, deem such person to be then of deficient health or strength, or by disease or bodily infirmity incapacitated for labour, or liable to be injured by continued employment.

And no certificate so annulled shall be valid in respect of the person named therein for the purposes of this Act from the day when the certificate shall have been so annulled. And the production of the certificate shall be evidence that the certificate was annulled on the day so stated.

15. *Certificates of real age may be obtained.*] And be it enacted, That in case any person shall be desirous of proving the real age of any person for whom a certifying surgeon shall have refused to grant a certificate of age for the purposes of this Act (g), or whose surgical certificate any inspector or sub-inspector shall have annulled (r), the inspector or sub-inspector shall, on demand, give to such person a requisition under his hand, in a form (s) to be approved of by the inspectors and by the registrar general, for the production of a duly certified copy of the entry of the birth or baptism of such person: provided the party demanding the same shall declare the names of such person and of his parents, with the place where and the year in which he was born or baptized, which particulars shall be set forth in the requisition. And every party to whom such requisition shall have been given shall be entitled, upon payment of 1s., to receive (t), on personal application, or on application in writing, in such form and under such regulations as shall be approved of by the inspectors and registrar general, from any minister, registrar, or other person having the care of any register of births or baptisms in which the birth or baptism of such person is entered, a duly certified copy of the entry in such register, which shall be indorsed on the aforesaid requisition, and shall be signed by the minister, registrar, or other person having charge of such register.

And such payment of 1s. shall be instead of all other fees or payments to which such minister, registrar, or other person shall be entitled.

And if the said certified copy proving the age of the person

(g) See sec. 11, *ante*, p. 38.

(r) See ss. 13, 14, *ante*, p. 39.

(s) Public notice has not been given of this form.

(t) The refusal of the officer to sup-

ply a copy will expose such officer to a criminal prosecution. Beside an action will lie at the suit of the injured party, and a proceeding for penalties under sec. 45, *post*, p. 48.

named therein to be such as to entitle him to have the surgical certificate required, shall be produced to the certifying surgeon of the district, he shall examine the same, and if it shall appear to him that the said certified copy has not been altered or falsified in any manner, the certifying surgeon shall thereupon, without further fee or reward, give a surgical certificate in the form provided for that case in schedule (A.) to this Act annexed (u), and shall write the word "Examined" upon the certified copy of the entry of the birth or baptism which he shall have received, with his signature, and the date of such signature, and shall send such certified copy by the post to the sub-inspector of the district, who shall send a receipt for the same by post to the said surgeon, and shall keep such certified copy of the entry of the birth or baptism, for future reference, if necessary.

And if any inspector of factories shall require a certified copy of the entry of the birth of any person employed in any factory from the office of the registrar general, he, or any person deputed by him, shall, on producing a requisition in the form herein-before provided (x), be entitled to examine the indexes to the registers in the general register office, and to receive such certified copy indorsed on the requisition without the payment of any fee (y).

But no certified copy of the entry of any birth or baptism issued in consequence of any such requisition herein-before provided shall be admissible in evidence in any court or for any purpose, save for the purposes of this Act.

Provided always, that in those cases in which a surgical certificate shall have been refused or annulled in consequence of deficient health or strength, or by reason of disease or bodily infirmity, the inspector or sub-inspector shall not sign the requisition herein-before mentioned, and such person shall not be employed on proof of real age only.

16. *Certificate to be obtained before the person is employed, and to serve only for one factory.* And be it enacted, That before employing any person requiring a surgical certificate under the Factory Act as amended by this Act (z) the occupier of the

(u) See form *post*, p. 54. Forms of such a certificate may be obtained of Messrs. Shaw, Fetter Lane, London, the publishers of this volume.

(x) See *supra*.

(y) The stat. 6 & 7 W. 4, c. 86, s. 37, requires certain fees to be paid for such searches and copies to the registrar-general.

(z) The 3 & 4 W. 4, c. 103, s. 11, *ante*, p. 13, prohibits totally the employment of children under 13 years of

age, without a surgical certificate, and s. 14 prohibits the employment of children between 13 and 18 for more than nine hours, or between 9 o'clock, p. m., and 5 o'clock, a. m. By sec. 9 of this Act, *ante*, p. 37, no such certificate is required when the *young person* is above 16. It must be remembered that by the above, sec. 16, the *occupier of the factory* must obtain the certificate.

factory shall obtain the surgical certificate (*b*), save as herein-after excepted (*c*), and shall keep, and be bound to produce every such certificate, when required, to the inspector or sub-inspector (*d*).

And no surgical certificate shall be valid except for employment at the factory for which it was originally granted (*e*), or, if granted by a certifying surgeon, at any other factory in the occupation of the same person who is occupier of the factory for which the certificate was originally granted, provided such other factory be in the district of the certifying surgeon who granted the certificate, and the certificate be produced in the factory where the person named in the certificate is at work.

And the certifying surgeon, as often as he shall visit a factory for the purpose of granting certificates, shall enter in the register (*f*) of workers the date of his visit, and the other particulars set forth in the form and according to the directions given in schedule (B.) to this Act annexed (*g*).

17. *Surgical certificates may be dispensed with for seven or thirteen days.*] Provided always, and be it enacted, That no occupier of any factory shall be liable to any penalty for employing any person in any manner not contrary to the other provisions of the Factory Act as amended by this Act (*h*), without a surgical certificate, for any time not exceeding 7 working days, or, when the certifying surgeon shall reside more than 3 miles from the factory, for any time not exceeding 13 working days, provided all surgical certificates for that factory (*i*) be granted only by the certifying surgeon appointed for that factory. But this enactment shall not be construed to dispense with the certificate of school attendance (*k*), or to authorize the employment of any person in respect of whom the certifying surgeon shall have refused to grant such surgical certificate (*l*).

(*b*) Various prosecutions have of late been successfully instituted against mill occupiers for violating this clause, and it is to be hoped the inspectors will not relax their praiseworthy vigilance.

(*c*) See the exception in the next section which applies only to factories where there is a certifying surgeon.

(*d*) See sec. 3, *ante*, p. 35.

(*e*) The former Act did not require this certificate to be granted for any particular factory, but by the new form in this Act, Sched. A., *post*, p. 83, it will be seen that the certificate is for employment at a particular factory.

(*f*) Care should be taken by surgeons in carrying out this provision accu-

rately, as an information has been laid against a mill occupier for employing a child without a surgical certificate, when it turned out the surgeon had entered the certificate in the *wrong book*.

(*g*) This passage would have been more properly introduced in some other place. The particulars refer to those in the schedule which are applicable to the surgeon alone.

(*h*) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(*i*) This exception arises from the provision in sec. 13, *ante*, p. 38, for the visits of the certifying surgeon.

(*k*) See secs. 38 & 39, *post*, p. 62.

(*l*) See sec. 14, *ante*, p. 39.

18. *Lime-washing and other washing of the interior of factories.*] And be it enacted, That (*k*) after the 6th June, 1844, it shall not be necessary to limewash the walls of any mill, factory, or building, or to whitewash the ceilings of any rooms therein, otherwise than is herein-after provided. And that all the inside walls, ceilings, or tops of rooms, whether plastered or not, and all the passages and staircases of every factory, which shall not have been painted with oil once at least within 7 years, shall be limewashed once at least within every successive period of 14 months, to date from the period when last whitewashed; and all the inside walls and ceilings or tops of rooms in which children or young persons are employed, and which are painted with oil, shall be washed with hot water and soap once at least within every successive period of 14 months, as aforesaid (*l*).

19. *Protection of workers in wet-spinning flax mills.*] And be it enacted (*m*), That after the expiration of 6 months from the 1st of October, 1844 (*n*), no child or young person shall be employed in any part of a factory in which the wet-spinning of flax, hemp, jute, or tow is carried on (*o*), unless sufficient means shall be employed and continued for protecting the workers from being wetted, and, where hot water is used, for preventing the escape of steam into the room occupied by the workers.

20. *Mill-gearing not to be cleaned while in motion.*] And be it enacted, That no child or young person shall be allowed to clean any part of the mill-gearing (*p*) in a factory while the same is in motion for the purpose of propelling any part of the manufacturing machinery; and no child or young person shall be allowed to work between the fixed and traversing part of any self-acting machine while the latter is in motion by the

(*k*) See 42 G. 3, c. 73, s. 2, *ante*, p. 2, and 3 & 4 W. 4, c. 103, s. 26, *ante*, p. 2, which required a more frequent lime-washing. The former also requires cotton and woollen factories to be well ventilated.

Certain humane provisions have been issued by the inspectors as to the age and dress of the persons engaged in these employments, and also as to the times when such lime-washings, &c., should take place. See sec. 21, note (*s*), *post*, p. 44.

Several prosecutions have of late been successfully carried out against mill occupiers for not lime-washing their factories, and heavy fines and costs inflicted.

(*l*) See the penalty for the omission, s. 68, *post*, p. 73, and as to the entry in the register relative to this purification, see Sched. B. *post*, p. 88.

(*m*) As to the proceedings for violation of this clause, see sec. 42, *post*, p. 66. The penalty is contained in sec. 56, *post*, p. 72.

(*n*) This is apparently after the 1st April, 1845, as the months are to be interpreted as calendar months. See sec. 73, *post*, p. 81.

(*o*) By the 9 & 10 Vict. c. 40, *post*, p. 97, certain rope works are excepted from this Act.

(*p*) See the interpretation of this word, s. 73, *post*, p. 81. The penalty is contained in sec. 56, *post*, p. 72.

action of the steam engine, water-wheel, or other mechanical power (g).

21. *Machinery to be guarded.*] And be it enacted (r), That every fly-wheel directly connected with the steam engine or water-wheel or other mechanical power, whether in the engine house or not, and every part of a steam engine and water-wheel, and every hoist or teagle, near to which children or young persons are liable to pass or be employed (s),

(g) Various prosecutions have of late been made under this section, and heavy fines and costs incurred.

(r) As to the proceedings for violating this clause see secs. 42, 43, *post*, p. 66. Unfortunately for the cause of justice mill occupiers have in some instances escaped the penalties of their breach of this clause owing to the fact that the justices before whom the information had been laid were themselves mill occupiers working unfenced machinery.

(s) See note (p), *ante*, p. 43, and sec. 73, *post*, p. 81. *Horizontal shafts*, the chief cause of death and accident, are, it would seem, included within the general term, *mill-gearing*.

It appears from the reports of the inspectors of factories that no less than forty persons employed in manufactories annually lose their lives or suffer mutilation from unfenced shafts, which the law requires to be *securely fenced*. The inspectors have not hitherto in every instance prosecuted mill occupiers for this violation of the statute. In future, however, it is supposed that every such offence will be promptly punished. Again, it is understood that henceforth the inspectors will be empowered to direct one or more actions under 7 & 8 Vict. c. 15, sec. 24, *post*, p. 52, to be brought in the name and on behalf of any person who shall be reported by such inspector to have received any bodily injury from the machinery of any factory, for the recovery of damages for and on behalf of such person. Sec. 26, *post*, p. 52, provides for the application of the compensation when recovered.

It is to be observed that the 7 & 8 Vict. c. 17, s. 21, does not prescribe any particular mode by which shafts or dangerous machinery shall be *securely fenced*, but merely requires it to be *securely fenced*, to enforce which enactment the circular of 31st January, 1864, was promulgated. Many plans have been suggested for securely fencing high placed horizontal shafts; but,

while it is left to the choice of every mill occupier to attain the object of the legislature by such contrivances as shall be best adapted to the circumstances of his particular case, Lord Palmerston in his high official capacity has directed that the attention of mill occupiers should be called to the following suggestions for preventing accidents from shafts. See Inspectors Circular, 18th March, 1864, "*For securely fencing horizontal shafts above seven feet from the floor*:"—"It is well known that the greater number of serious accidents of this kind have been caused by the *tapping of straps* upon revolving shafts; and it has been stated to Lord Palmerston that such accidents have in some mills been prevented by the adoption of *rectangular hooks fastened to the ceiling and hanging downwards*, on each side of each drum, with *their horizontal branches running under the side edges of the drum*, or, by the placing of a *beam or strong rod parallel to the shaft and over it*, so that whenever a strap slips off a drum it is caught by the hook, or by the beam, or rod, instead of falling on the revolving shaft.

Serious accidents have also been caused by the clothes of one of the work-people being caught by the shaft while such person was engaged in replacing a strap on a drum, and with a view to prevent accidents from such causes Lord Palmerston recommends that none but *male adults* should perform any operation which brings them near a shaft, and that they should always be clothed in some dress that fits close to the body, without any loose parts or ends which could catch in any part of the machinery.

Again, other serious accidents have happened to persons employed in *oiling and cleaning revolving shafts* and in *lime-washing* while shafts have been in motion (see Carter's

and all parts of the mill-gearing in a factory, shall be securely

"case, narrated in the *Inspectors Reports for 30th April, 1855*, p. 10), and Lord Palmerston would recommend that the *oiling and cleaning of shafts* should be performed by *male adults, who alone are now by law allowed to perform these operations*, and that they should do it *before or after the hours of work*, or during the *meal hours* of the young persons and women *while the machinery is standing still*, and that the *lime-washing and reparation* for it should be done on those *week days when the factory is not at work*.

"The best proof that the adoption of these or any other suggestion is a sufficient compliance with the requirements of the law in this respect, will, of course, be the absence of accidents hereafter in those factories in which these precautions shall have been adopted; at the same time the inspectors are instructed to remind the occupiers of factories that if an accident shall occur in any factory in which no attempt shall have been made within a reasonable time to introduce any contrivances by which these accidents might have been prevented, they will be required to lay the case before the Secretary of State under the provisions of s. 94 of 7 Vict. c. 15, for his decision, whether an action for damages shall be instituted on behalf of the injured person, but no abstinence from legal proceedings on the part of the inspectors will free the occupier of a factory from his legal liability to an action at the suit of the injured person himself, or in case of death at the suit of his relatives.

"The inspectors further point out distinctly that the different contrivances which have been proposed apply only to horizontal shafts above seven feet from the floor." See the Factory Inspectors Circular of 15th March, 1854. By the term *seven feet from the floor* is meant that the outer surface of the shaft must not in revolving come within 7 feet of the floor, or from the surface of any stage, platform, or other standing room above the floor.

The inspectors have by circular informed the mill occupiers that they will hold that every horizontal shaft above seven feet from the floor, which is provided with substantial rectan-

gular hooks, or rods, to be securely fenced against accidents caused by the lapping of the straps, BUT NOT AGAINST OTHER ACCIDENTS; that is such accidents which arise from a person coming in contact with the shaft when attempting to adjust a strap, or engaged in oiling or cleaning the mill-gearing, or in doing any other thing which brings him in close proximity to an uncovered revolving shaft. So likewise, if by the construction of the room, or otherwise, means and opportunity are afforded to the work people of ascending to an elevated position, so as to bring them near to a revolving shaft, the hooks or rods are no secure fence. Adequate means must be adopted, either by a permanent casing or other contrivance, against all accidents from a horizontal shaft, and must be applied to all parts of such shafts to which there may be access while it is revolving.

In consequence, notwithstanding the above circular, of the general neglect to fence shafts, and the constant recurrence of accidents, the Factory Inspectors issued the following Circular, dated 23rd January, 1855:—

"The inspectors of factories have received a letter from Viscount Palmerston, dated the 8th instant, directing that they should institute proceedings to enforce the law, which requires that horizontal shafts shall be fenced, and that they should not defer such proceedings until after the occurrence of accidents which such fencing might have prevented. The circular letter of the inspectors, dated 15th March last (see *supra*) is therefore withdrawn and is no longer in force.

"The number and severity of preventible accidents occasioned by unfenced horizontal shafts have not decreased since the 31st January, 1854, when the subject was pressed upon the attention of the occupiers of factories by the circular letter of the inspectors of that date; and it appears that though various methods suggested to Viscount Palmerston at the interview of a deputation of mill-owners with his lordship last March, as having been long in successful operation in some cases, and therefore practicable in all, have been adopted to a very inconsiderable extent. The inspectors, therefore, by direction of Viscount Palmerston,

fenced (t). And every wheel-race not otherwise secured shall be fenced close to the edge of the wheel-race. And the said

"have again to call the attention of the occupiers of factories of the United Kingdom to the continued non-observance of the 21st sec. of 7 Vict. c. 16, in regard to the 'securely fencing' all horizontal shafts at whatever heights they may be from the floor; and they hereby give notice that it will be their duty to take steps for enforcing the above mentioned provisions of the Factory Act. Lord Palmerston has desired the inspectors to annex drawings, of fences which have recently been adopted in well known factories. But no horizontal shaft revolving within seven feet from the floor is 'securely fenced,' except it be by a permanent fixed casing.

"The two first drawings are of the fences in slack mills, at Hyde, near Manchester, under the superintendence of Mr. Hall, the manager, who will permit any gentleman to view them who may wish to see the manner in which he has complied with the law. The last drawing is of the fences erected by Mr. Robert Russell in his factory at Blackhall, near Paisley.

"It becomes the duty of the inspectors to require all occupiers of factories, who have not hitherto complied with the law, to commence at once to adopt adequate means for 'securely fencing' their horizontal shafts; and the sub-inspectors will be instructed to report to the inspectors, every factory in which this has not been done, and the law will be uniformly carried into effect." See Inspectors Circular of 23 January, 1855.

In opposition to the above circulars it is to be regretted that the mill occupiers have formed an association called "The National Association of Factory Occupiers."—(Compiled and Extracted from Inspector L. Horner's Report for April, 1855.)

(t) Questions have been raised in special cases which are now under submission to the Court of Queen's Bench, as to the proper interpretation of the words "securely fenced," and whether by such words the law requires in all cases that the shaft shall have a special artificial casing. In an action against mill-owners for not securely fencing a part of their machinery, whereby in-

jury resulted to one of their workmen, the proper question for the jury is, whether the mill was securely fenced according to the best known method of fencing at the time of the accident; *Schofield v. Schunk*, 24 L. T. 253; and it is not sufficient that the machinery was fenced in the ordinary manner used and approved as sufficient at the best regulated mills in the district.

Lord Campbell, C. J., in giving judgment said, "If the learned judge who tried the cause had directed the jury in the terms of the statute, this verdict might probably have stood, but I am of opinion that the language which he did use amounted to a misdirection, and that there must be a new trial. The 21st sec. of the Act contains an absolute enactment that the machinery shall be 'securely fenced,' and the question was in this action founded upon that enactment, whether it was securely fenced. But the learned judge asked the jury whether it had the ordinary protection approved in the best regulated mills in the district of Oldham; and I think that is contrary to the words and spirit of the Act. The best regulated mills might be ill regulated mills, in which the machinery was not securely fenced, and the jury under that direction may have thought that though the best regulated mills were not securely fenced, yet they were bound to find for the defendants because their mill was as good as the best. I agree that if the direction had been that the defendants were not liable if they adopted the best means of fencing the machinery known at the time, that would have been right; but that was not the direction, and I feel compelled to say that the direction which was given was wrong."—*Colebridge, Wightman and Crompton, JJ.*, concurred.

It is suggested that in order to enforce this clause the powers of the 43rd sec., *post*, p. 66, should be enforced. The expenses of which would, it is submitted, enforce a ready obedience to the law. It is also suggested in a future Factory Act, that the inspectors should have power to fence such machinery as in their discretion shall require to be securely fenced, and charge the expenses thereof upon the mill-occupiers.

protection to each part shall not be removed while the parts required to be fenced are in motion by the action of the steam engine, water-wheel, or other mechanical power for any manufacturing process (u).

(u) See the penalty for neglecting to fence, secs. 58, 60, *post*, p. 73. For the private remedy, see sec. 24, *post*, p. 52.

This clause has received the judicial exposition of the Court of Exchequer, in a case of *Coe v. Platt*, 6 Exch. Rep. 722; S. C. 90 L. J., Ex., 407; S. C. 2 L. M. & P. 488, in which it was decided that it is no breach of duty under this clause to leave machinery unfenced, except when such machinery is in motion for the purpose of manufacture. Therefore, where a declaration stated that the defendants were the occupiers of a building in which steam power was used to work machinery employed in manufacturing cotton, and in part of which building there was certain mill-gearing, being a shaft which was worked and put in motion by the said steam power, yet the defendants disregarded their duty in this, that the shaft was not securely fenced, contrary to the form of the statute, whereby the plaintiff received great bodily injury. The court held such declaration to be *bad in arrest of judgment*, for not showing that at the time of the accident the machinery was in motion for some manufacturing process. The court, however, decided the general principle, "*That under the above statute the leaving machinery unguarded when required to be securely fenced, is a breach of duty towards all persons, and not merely towards children and young persons.*"

The following judgment was given in this case:

Parke, B.—The rule must be absolute to arrest the judgment. One objection was, that the statute applied only to the protection of children and young persons working in factories, for whose benefit alone the enactment was intended, and that such only should sue in respect of any violation of its provisions. Upon that point we thought it unnecessary to hear plaintiff's counsel, because we are of opinion that the meaning of the Act is, that there shall be on all occasions a protection to machinery in motion for the purposes therein described. Though its main object may have been to afford security to children and young

persons, who are more likely to sustain injury than others, yet there is a positive enactment that in all factories within the interpretation clause, when any part of the machinery is used for any manufacturing process, it shall be securely fenced, consequently if any person sustains an injury through the violation of this enactment, he has a right to bring an action. *That duty is clearly imposed on the owner*, although the motive of the legislature was the protection of children and young persons employed in these factories; and if it should happen that a factory of this sort was without children or young persons employed in it (which practically never takes place), still the same obligation is imposed by the statute. If it were not so, this declaration would be open to another objection, namely, that it contains no averment that this was a factory in which children and young persons were employed.

Then, taking it for granted that the owners were bound to keep every part of the mill-gearing while in operation securely fenced, the question is, whether a violation of their duty is sufficiently stated in this declaration. Now, the 21st sec. requires "*that every fly wheel directly connected with the steam engine, or water wheel, or other mechanical power, whether in the engine-house or not, and every part of a steam-engine and water wheel, and every hoist or teagle, near to which children or young persons are liable to pass or be employed*" (that qualifies only the last expressions), "*and all parts of the mill-gearing in a factory, shall be securely fenced.*" It then goes on, "*and the said protection*" (that is, "*fencing*") "*to each part shall not be removed while the parts required to be fenced are in motion by the action of the steam-engine, water wheel, or other mechanical power, for any manufacturing process.*" That, I think, means that the owner shall keep the mill-gearing securely fenced at all times when the steam-engine is used for any manufacturing process; but it does not apply to cases in which the engine is used for other purposes, as for instance, trying whether the machinery

22. Notice to be given of accidents causing bodily injury.]

is in repair. Then, does this declaration show that the mill-gearing was not fenced at a time when the machinery was in motion for a manufacturing process? When carefully examined, it will be found to contain nothing of the kind. It begins by stating that the mill was in the joint occupation of the defendants, "in which said building steam power was used to work machinery employed in manufacturing cotton," (thus bringing this mill within the description of the term *factory* in the interpretation clause,) "and in part of which said building there was, before and at the time, &c., a certain mill-gearing, being a shaft, which, before and at the time, was worked and put in motion by the said steam power." It is not averred that the shaft was put in motion by steam power for the purpose of carrying on the manufacture of cotton. It then goes on to allege that the plaintiff was lawfully in the mill, and the breach of duty stated is simply that, while the mill-gearing was in motion, the shaft was not securely fenced, contrary to the form of the statute, &c. Therefore it seems to me that the declaration does not disclose any violation of the duty imposed by this Act, namely, that of *fencing the machinery while in motion for a manufacturing process*. Also, upon the facts of the case it turns out that at the time this unfortunate child sustained the injury, the machinery was not in motion for any manufacturing purpose, so that the declaration could not be amended. I am sorry for it, but our duty requires us to arrest the judgment.

Alderson, B.—I am of the same opinion. I regret very much the effect of our decision; but it is less to be regretted seeing that the objection goes to the action itself, for it shows that the plaintiff has no right in point of law to maintain the action, since the defect is one which could not be successfully supplied by the facts—in truth, it is an objection to the merits. At first I was disposed to think that the latter words of the 21st sec. might be got over as being a mere description of the mechanical power, that is, to be read not as descriptive of machinery being in motion for a manufacturing purpose, but of machinery ~~not in motion by the mechanical power~~ used for manufacturing—that construction can-

not be supported, for in the 20th sec. the legislature speaking of self-acting machines, says, that "no child or young person shall be allowed to clean any part of the mill-gearing in a factory, while the same is in motion for the purpose of propelling any part of the manufacturing machinery; and no child or young person shall be allowed to work between the fixed and traversing part of any self-acting machine while the latter is in motion by the action of the steam engine, water-wheel, or other mechanical power." In addition, the 21st sec. says, "for any manufacturing process," thus clearly showing that it applies only to machinery in motion for manufacturing purposes. Now, this declaration contains no allegation that the machinery was, at the time of the accident, in motion for such a purpose; all that appears is, that the mill was worked by a power ordinarily used for manufacturing purposes; and supposing it was, it does not therefore follow, that, at the time of the accident, the mill-gearing was in motion for a manufacturing purpose. If, however, the declaration had contained the necessary averment, the plaintiff must have failed, as the facts would not warrant it. With respect to the other point I entirely agree with the rest of the court.

Platt, B.—The 21st sec. appears to me clearly to apply a general duty in the mill-owner towards all that portion of mankind who are brought to factories for the purpose of being employed in the manufacture of certain goods. The language is remarkable; "every hoist or teagle," qualified by the words, "near to which children or young persons are liable to pass or be employed," and it then goes on to say, "all the parts of the mill-gearing shall be securely fenced." If it merely meant to limit the duty so far as children and young persons are concerned, why are not the same words found in the latter part as in the next previous portion of the section? It seems to me that the section was advisedly so framed, in order to point to a distinction between those two things. Again, the 32d sec. enacts, "that no female above the age of eighteen years shall be employed in any factory, save for the time and in the same manner as young persons may be employed

And be it enacted, That if any accident shall occur in a factory

in factories," evidently contemplating the employment of females of any age. Now, the duty imposed is to fence, but it is not limited to that, for the fencing is "not to be removed while the parts required to be fenced are in motion by the action of the steam-engine, water-wheel, or other mechanical power, for any manufacturing process." That must surely mean during the time the machinery is in motion in the course of manufacturing, for supposing it had ended with the words "or other mechanical power," then the fence could not be removed while the machinery was in motion for any purpose. That was certainly never contemplated. The words "*for any manufacturing process*," are not descriptive of the word "power," but of the time during which the fence is to continue. Upon this declaration, it cannot be said by any intendment that the defendants did not keep the machinery fenced whilst in motion for a manufacturing purpose, and consequently they have been guilty of no breach of duty.

This case was affirmed on error in the Exchequer Chamber, on the 26th February, 1859. It will be found reported in 7 Ex. 460; 8 C. 16 Jur. 174; 8 C. 21 L. J. 148, Ex. The judgment delivered was as follows:—

Patteson, J.—There are many provisions in this Act of parliament with respect to the fencing of mill-gearing and machinery, and some sections have been referred to which require inspectors to give notice that the machinery is dangerous, before any penalty is incurred. But those sections are with reference to there being no fencing whatever provided. If an inspector saw part of the machinery not fenced, and inquired the reason, the answer would probably be that there was a fence, but it was removed because the mill was not at work. In such a case no penalty would be incurred. Then comes the question, what is the meaning of the 21st sec., and whether this declaration discloses any violation of its provisions. It has been observed that the 20th sec. does not contain the words "*for any manufacturing process*," and therefore the legislature, in inserting these words in the 21st sec., must have had a different object in view. Now, the declaration states, that the defendants were the occupiers of a building used

to work machinery employed in manufacturing cotton, "in part of which building there was, before and at the time of the committing of the grievances, certain mill-gearing, being a shaft, which was then working and put in motion by steam-power," but it does not go on to say for what purpose it was in motion. The declaration then states that the plaintiff was lawfully in the mill, and that the defendants disregarded their duty in this, that the shaft was not then securely fenced. The word "*then*" must have reference either to the time when the plaintiff was in the mill, or to the time when the accident occurred. Assuming it to mean the latter, the allegation is, that the shaft was then in motion, and not securely fenced. Then, is it necessary to add that it was in motion "*for some manufacturing process*?" We are all of opinion that the latter part of the 21st sec. does not come by way of proviso. The fallacy of the argument on behalf of the plaintiff consists in the assumption, that the words "*securely fenced*," mean "shall be kept securely fenced at all times." But the true meaning of the section is, that the mill-gearing shall be securely fenced, that is, a secure fence shall be provided for every part of it, and such fence shall not be removed, but kept there when the mill-gearing is in motion for any manufacturing process. This is not an action for never having had fences at all, but because, at the time when the accident happened, there was no fence to the shaft. The statute, however, only requires a fence to be kept up when the mill-gearing is in motion for a manufacturing process, and therefore the declaration ought to have shown that, at the time of the accident, the shaft was in motion for a manufacturing process. It is argued, that the declaration may be read as alleging that no fence was ever provided; but assuming that to be the fact, how is it material if the defendants had the power of removing the fence when provided, and were at liberty to have it away at the time this accident happened? The question is, whether at the time of the accident, it was the duty of the defendants to have had the shaft securely fenced. The 21st sec. only requires it to be so when in motion for a manufacturing process, and the declaration

which shall cause any bodily injury to any person employed

does not allege that it was. The allegation cannot be implied, because it is material and traversable; and the verdict does not cure the defect, for the jury could not have found for the plaintiff unless the fact, if in issue, had been proved. The declaration is therefore insufficient, and the judgment of the court below must be affirmed.—*Judgment affirmed.*

The plaintiff subsequently amended the declaration by the insertion of an allegation, that a certain part of the mill-gearing, by which the accident was occasioned, was in motion at the time for a manufacturing purpose. It appeared that the horizontal shaft moved several vertical shafts which passed through the upper floors, and worked the machinery by which the cotton was manufactured in the different rooms of the factory. One of these vertical shafts had its fencing removed for the purpose of repair, and all the machines which were worked by this shaft were at rest; but the vertical shaft itself revolved, and the process of manufacture continued to be carried on in the other rooms of the factory. The court held that the master of the factory was not liable under the 7 & 8 Vict. c. 15, s. 21, for an accidental injury occasioned to a little girl in the room where no manufacturing process was being carried on by the revolution of this vertical shaft. The court gave the following judgment:—

Alderson, B.—We are of opinion that this rule ought to be discharged. There is no question here as to *negligence at common law*; the *defendants have taken all those precautions which, but for the special provisions of the statute as to fencing, the mill-gearing would be required from cautious men*. But no doubt this vertical shaft was in motion and was not fenced at the time the accident happened; the fact being that the fence was down during the time repairs were going on, and the shaft was being prepared to be put into gear, in order that the machine might be set to work again for the purpose of resuming the manufacturing process in the room where the plaintiff was at the time. [His lordship stated the facts and proceeded.] The question is, whether under these circumstances the Act imperatively required the defendant to keep the fence round this vertical shaft

at this time and under these circumstances; the question depends on the 21st sec. of the Factory Act, considered in connection with the 73rd sec., the interpretation clause. [His lordship read the 21st sec.] Now, I cannot help thinking that the probable intention of the legislature in this clause was to give full protection to children and young persons who were engaged in attending to their duties on the machines put in motion by the mill-gearing in the rooms, or floors, where such manufacturing process was going on, and that the protection was to be confined to the time when such process was going on there; for there seems to be no reason to give protection by fencing, when no one was, in the usual course of his or her ordinary duties, likely to be there at all. And this would be accomplished by our holding, *that the mill-gearing in each separate room is separate and distinct from the mill-gearing in any other room, and requires fencing only while some manufacturing process is going on in that room, and it is in motion for that purpose*. This is, I think, the proper construction of the 21st sec., but undoubtedly it may be plausibly argued that the whole of each vertical shaft is but one mill-gearing, and that if it is turning machinery in another room it is in motion for a manufacturing process; and if this were the case here, it might be fit to have a further argument before we decided otherwise. This case also might be put as one of some difficulty. Suppose the injury arose from the defective fencing off of this horizontal shaft at the time when by its own proper revolution it was not turning any machinery in the ground floor immediately connected therewith, but was immediately connected with machinery turned on the other floor by the vertical shafts connected with the horizontal shaft, and turned by it. It might then, perhaps, be said that the horizontal shaft might be in motion for a manufacturing process, and that the fencing it off was imperatively required by the Act. But this case is clear of both these difficulties. Here the injury is received from the vertical shaft in motion, but at a time when by its motion it turns no machinery immediately connected with it either in the room where it was, or in any other room, and connected, if at all,

therein which shall have been of such a nature as to prevent the person (v) so injured from returning to his work in the factory before 9 o'clock of the following morning, the occupier of the factory, or in his absence his principal agent (w), shall within 24 hours of such absence (x) send a notice thereof in writing to the surgeon appointed to grant certificates of age for the district in which the factory is situated, in which notice the place of residence of the person injured, or the place to which he may have been removed, shall be stated; and the surgeon shall send a copy of such notice to the sub-inspector of the district by the first post after the receipt thereof.

23. *Certifying surgeon to examine into the causes and extent of accidents, and report thereon.*] And be it enacted, That if a certifying surgeon shall receive notice as aforesaid that an accident has occurred which has caused bodily injury to any person employed in a factory for which he has been appointed to grant certificates of age, and that it has been of such a nature as to have prevented the person so injured from returning to his work in the factory the following morning, he shall with the least possible delay proceed to the said factory, and make a full investigation as to the nature and cause of such bodily injury, and shall within the next 24 hours send to the inspector of the district a report (y) thereof, a copy of which report, together with any other information which he may receive respecting the said accident, the inspector of the district shall send to the office of the factory inspectors as soon as conveniently may be.

And the certifying surgeon, for the purpose of such investigations only, shall have the same power, authority, and protection as an inspector (z), and shall also have power to enter any room in any building to which the injured person may have been removed.

only immediately with the machinery on the ground floor by means of the horizontal shaft, which alone communicates with that original moving power. In truth, this vertical shaft was turning (actively of itself) nothing at all used for any manufacturing process; it did not, therefore, require at that time to be fenced. The defendants have not been neglectful at common law, nor have they omitted any thing required of them to do at law; that is to say, they have not committed the offence. The rule therefore must be discharged.—*Rule discharged.*

(e) This clause is not confined to children or young persons, and so far

as this Act is concerned, this clause has no operation until there are certifying surgeons for the district.

(w) See the definition of the word "agent," sec. 73, *post*, p. 81.

(x) The meaning of this is at least doubtful. The absence may have commenced more than 24 hours before the accident. Probably the word in the text is erroneous, and should have been "accident."

(y) For the purpose of insuring accuracy and for preventing collusion, it would be advisable in any future Act of parliament to make the certifying surgeon take an oath for the due fulfilment of his office.

(z) See secs. 3 & 4, *ante*, pp. 34, 35.

And for such investigation the said surgeon shall receive a fee not exceeding 10 shillings, or such part thereof, not being less than 3 shillings, as the inspector of the district may consider a reasonable remuneration to the surgeon for his trouble, which fee shall be paid as other expenses incurred under this Act (a).

24. *Prosecution for compensation by an inspector.*] And be it enacted, That one of Her Majesty's principal secretaries of state, on the report and recommendation of an inspector, may empower such inspector to direct one or more actions (b) to be brought in the name and on behalf of any person who shall be reported by such inspector to have received any bodily injury from the machinery of any factory, for the recovery of damages for and on behalf of such person (c).

25. *Application of compensation when recovered.*] And be it enacted, That any damages which shall be recovered in any action so directed to be brought shall be paid, as soon after they are received as conveniently may be, to the person in whose behalf they have been recovered, or shall be otherwise settled for the use and benefit of the said person in such manner as shall be approved of by the secretary of state.

And in case a verdict shall be found for the defendant, or judgment shall be recovered against the plaintiff, or the plaintiff shall be nonsuited, the defendant shall have the like remedies (d) for his costs against the inspector as he might have had against the plaintiff.

And all charges and expenses incurred in bringing any such action, beyond what are recovered from the defendant, and not otherwise provided for, shall be paid as other expenses incurred under this Act are to be paid (e).

26. *For ensuring regularity in the observance of time.*] And be it enacted (f), That the hours of the work of children and young persons in every factory shall be reckoned from the time when any (g) child or young person shall first begin to work in the morning in such factory (h), and shall be regulated by a

(a) This Act contains no provision for the payment of *expenses* incurred under it.

(b) The inspector should be prepared to bring himself within the terms of this provision in order that he may justify under this Act, in case of legal proceedings.

(c) See sect. 21, *ante*, p. 44. This clause does not bar the common law right of action in any particular case.

(d) The writ of *scire facias* affords the necessary remedy.

(e) See n. (a), *supra*.

(f) This clause is recited in 18 & 14

Vict. c. 54, s. 1, *post*, p. 102, and has thereby been modified as to the cessation of labour. See *Ryder v. Mills*, *post*, p. 53, n. (o). See sect. 28, *post*, p. 53, n. (o).

(g) It is immaterial therefore whether any particular child or young person began to work at a late hour. See, however, s. 52, *post*, p. 71.

(h) See *Ryder v. Mills*, 3 Ex. Rep. 802; S. C. 19 L. J. 82, M. C., *post*, p. 53, in which it was admitted that the time for work was to be reckoned from the moment that the first child or young person first began to work in the morning.

public clock, or by some other clock open to the public view, to be approved of in either case in writing under the hand of the inspector or sub-inspector of the district (i).

27. *Registers to be kept in every factory.*] And be it enacted, That registers shall be kept in the factory to which they relate, by the occupier of every factory, according to the forms and directions given in schedule (B.) (k) to this Act annexed (l).

And every inspector shall have power to require such occupier to send to him, in such manner as may be directed in the requisition, any extracts from such registers, and any other information with relation to the persons employed in the factory, which may be requisite to facilitate the performance of the duties of such inspector in any inquiry made under the authority of the Factory Act or of this Act (m).

But no information so sent by the occupier of any factory which is not contained in the registers, certificates, and other documents required by this Act to be received or kept shall be admissible in evidence in any proceeding against him for the recovery of any penalty.

And the registers, certificates, and other documents required by this Act to be received or kept shall be forthwith produced to the inspector or sub-inspector, on his demanding to examine the same at any time when the factory is at work (n).

28. *An abstract of this Act, and certain notices, to be hung up in every factory.*] And be it enacted (o), That it shall not

(i) See the entry in the register as to the clock in sched. B., *post*, p. 88.

(k) These forms can be obtained of Messrs. Shaw, Fetter Lane, London, the publishers of this volume.

(l) See s. 63, *post*, p. 75, for the penalty for making false entries.

Many prosecutions have of late been laid against persons guilty of a breach of this clause, and a heavy fine and costs inflicted. See sect. 28, *post*, p. 53.

(m) See a similar provision in 3 & 4 W. 4, c. 103, sect. 18, *ante*, p. 17.

(n) The preventing the inspector or sub-inspector from examining these documents renders the occupiers liable to a penalty. See s. 3, *ante*, p. 35.

(o) About the year, 1849, an information under this Act and section was exhibited by Thomas Dudley Ryder, a sub-inspector of factories, against one Mr. Mills, for neglecting and refusing to hang up at the entrance of the defendant's Cotton Factory, a notice of the times of beginning and ending daily work, of all persons employed in his actory. On this information the de-

fendant was convicted in the penalty of 5*l.* for the said offence. The defendant appealed against the decision to the next court of Quarter Sessions, and gave notice of such appeal, and thereupon, by consent, the informant and the defendant, by the order of Rolfe, B., stated a case according to the provisions of stat. 12 & 13 Vict. c. 45, s. 11, for the opinion of the Court of Exchequer. (For the case, see *Ryder v. Mills*, 3 Ex. Rep. 858; S. C. 19 L. J. 82, M. C.) The question raised for the opinion of the court was whether it was an offence against the Factory Acts or any of them, to employ a *young person* in a factory for 10 hours, and no more, in one day, such 10 hours ending at a period *which is more than 10 hours from the time when another child or young person first began work in the morning of such day in such factory*, if such last-mentioned ten hours are counted consecutively from that time, omitting only the meal times; if so, the conviction was to stand, if not, the parties agreed that a judgment of the court of

Quarter Sessions to quash the said conviction should be entered in conformity with the opinion of the court of Exchequer.

The case was elaborately argued by counsel on both sides, after which the court delivered the following judgment:—

Parke, B.—The question raised by this special case, by agreement between the crown and the defendant, is, whether it is an offence against the Factory Acts, or any of them, to employ a *young person* in a factory for 10 hours and no more in one day, such 10 hours ending at a period *which is more than 10 hours from the time when another child or young person first began to work in the morning of such day in such factory?* If such last-mentioned 10 hours are counted consecutively from that time, omitting only the meal times. This question depends entirely on the proper construction to be put on these Acts, and more particularly the 7 & 8 Vict. c. 15. These Acts must be construed according to the established rules for the construction of statutes. In a court of law we have only to ascertain the meaning of the words used by the legislature, and when that is ascertained we have to carry it into effect, and we are not to inquire whether the enactments are dictated by sound policy or not, that question is exclusively for the consideration of parliament. We agree also with the attorney-general that although the immediate question in this case did relate to *adult females*, who are more capable of taking care of themselves, and of continued labour than *children*, and consequently need less protection, and on whom the restriction from employing themselves as they may think best appears more of a hardship, the point to be decided is the same as if we were considering the case of *children and young persons only*; for the legislature has clearly put all females on the same footing as they are, that is, as young persons are. Indeed, the case, as agreed on by both parties, states that to be the question. Is then the owner of a factory liable to the penalty in respect of the employment of a child or young person in the manner stated? The Act imposes a penalty, and therefore, according to the established rule, must be construed strictly, that is, a man is not to be restrained from the liberty which he has of acting as he pleases, and rendered liable to punishment, unless the law has plainly said that he shall. It is not enough that we conjecture even

strongly that it was the intention of the legislature to have prohibited the act, there must be words indicating, and clearly, that it has done so, and applying this rule of construction we do not think that there are words in the statutes sufficiently plain and clear to render the conduct of the defendant in the case above-mentioned liable to punishment. On the opening of the argument by the attorney-general, we thought the defendant meant to contend that the time limited by the 26th section of the 7 & 8 Vict. c. 15, was to be calculated for each child or young person from the time that such child or young person first began to work in the morning, and that argument seemed to us (and we so expressed ourselves) to be altogether untenable, as being against the ordinary and grammatical sense of the words in that section; but such is not the construction contended for by the learned counsel for the defendant. He admits, and properly, that it is clearly the ordinary meaning of the words in that section that the period from which the time is to be reckoned for *all* children and young persons working at the factory is that time when the *first* child or young person, who was employed therein, began to work. Both sides are agreed upon this limit of the time, and there cannot be the least doubt about it. So, also, it is perfectly clear that the times *for meals* for all young persons must all be at the same period of the day, according to the plain words of the 56th section, which may be explained by the convenience of *all* the women and children and young persons belonging to one family having their meals prepared at the same time. But it is contended for the defendant that the other limit, the end of the time of working for infant children and young persons has not been prescribed, and that it has not been enacted that the time for the cessation of labour for all should be that when the first ceased to labour. Certainly, this has not been done in express words, and nothing was more easy than to have said in the 56th section that the twelve hours (reduced to eleven and ten by the subsequent statute of the 10 & 11 Vict. c. 29) *should end when any one had worked that time*, or to have said in the 36th section that all young persons should have the time for labour as well as for meals at the same period of the day. We must then consider whether in the absence of express words to this effect, we can collect from other parts of the Act that this was the mean-

ing of the legislature, and so clearly and unequivocally as to call upon us to give effect to it, and punish the defendant. Undoubtedly, if there was such an enactment it would have the effect of securing to the children and young persons, whom it was most certainly the object of the legislature to protect against their own improvidence, or that of their parents, the more effectual superintendence and care of the inspectors. Without question, it would more certainly prevent them from being overworked, and secure to them more completely the benefit of some education in public schools, which the legislature meant them to enjoy. It would advance the intended remedy. But then this result could only have been obtained by a larger sacrifice of the interest of the owners of factories, and we cannot assume that parliament disregarded so important a consideration. At any rate a court of justice cannot render a man liable to a penalty merely because it might think it would better promote the supposed object of the legislature than the provisions of the statute, according to their ordinary construction. The words used must clearly and plainly show that the act complained of is punishable. On the part of the prosecution it was contended that the intention of the legislature could be clearly collected, partly from the words in the Act itself, and partly from the schedule, and some reliance was placed upon the time reckoned in the 26th section, as meaning that it was to be continuously reckoned from the time when any one should begin to work, that is, that the next twelve hours (as the law stood then) after the time (with the intervals mentioned in the 26th section) should be the only hours of work, but we think that such is not the ordinary construction of that word, it means only that the computation of time shall then begin, and it does not state when it shall end. An argument was also drawn from the wording of the 52nd section, which provides, it was said, for the beginning of work, and therefore the 26th section must have been intended and ought to be construed to mean to provide for the whole time, the beginning and ending, otherwise that section would be unnecessary. But the 52nd section provides only for the evidence of the time of commencement, no more. The principal reliance was placed on the schedules, which are required to be adopted by section 23, as showing the intention of the framers of the Act, that the times of all should begin and end simultaneously. For, in

the first form it is clear that no names are intended to be mentioned. In the last, where particular individuals are to be named, the form expressly provides that it shall be so. It cannot be denied that the forms appear to have been constructed on the supposition that all would work the same time, but they are capable of being reconciled with the other supposition. For there seems to be, certainly, nothing expressly to forbid the blanks from being filled up so as to provide for the time of *part* ending at *one time*, and *part* at *another*. Indeed, if it were not so, no factory owner could employ some young persons for four hours, some for five, some for nine, (which he unquestionably may), for the schedules, if they are to be filled up strictly according to the forms, stating all as beginning and ending at the same time, are not adapted to such a case, and they must therefore undergo some alteration. On the other hand, some argument in favour of the defendant was deduced from the peculiar language of the 26th section, which requires notice of the times of the beginning and ending daily work of all persons, as if they might end at different times, and as if in such a case the Act required each to be named with his allotted time in the notice. But the distinction between the use of the term times instead of time, is by no means satisfactory to our minds, and we do not at all rest upon it. The ground upon which we proceed is, that although the Act of parliament (taken in conjunction with the 10 & 11 Vict. c. 29) does distinctly forbid the employment of *young persons*, and, therefore, *females*, for more than ten hours, and those to be taken between half-past 6 in the morning, and half-past 8 at night; although it distinctly requires that the time of all is to begin to be computed from the beginning of the *first to work*, and that an hour and a half are to be allowed for meals, and for all at *the same time*, it does not impose in sufficiently clear terms any other restriction on the employment of young persons, and they are therefore at liberty to agree with the master for working for less than the whole of that time within the limits aforementioned, ending at half-past 8, or any previous time they please, and with any intervals of leisure that may be thought convenient. *Therefore the conviction will be quashed.*

Alderson, B., added,—I have no doubt that that was the meaning of the word *reckoned*, that it was to distinguish between the hour at which the first person began to work, from the half-past 5

be necessary to hang up in any mill or factory any copy (*p*) of any abstract of the Factory Act (*q*), or of any regulations made in pursuance of the said Act, other than is hereinafter provided (*r*).

And that such abstract of the Factory Act as amended by this Act, as shall be directed by one of Her Majesty's principal secretaries of state, shall be fixed on a moveable board, and be hung up as soon as received by the occupier of the factory, or his agent, in the entrance of the factory, and in such other places as the inspector or sub-inspector of the district may direct.

And notices of the names and addresses of the inspector and sub-inspector of the district in which the factory is situated, of the name and address of the surgeon who grants certificates of age for the factory, of the clock by which the hours of work in the factory are regulated, of the times of beginning and ending daily work of all persons (*s*) employed in the factory (*t*), and any alteration thereof (*u*), of the times of the day and amount of time allowed for their several meals, of all time lost which is intended to be recovered (*x*), and of all time which shall be recovered, together with every other notice (*y*) required by this Act, written or printed in legible characters, and fixed on moveable boards, (each particular notice being signed by the occupier of every factory or his agent,) shall be hung up (*z*) in the entrance of the factory, where they may be easily read by the persons employed in the factory, and in such other places as the inspector or sub-inspector of the district may direct, and whence they shall not be removed while the factory is at work.

And in case any such abstract of the Factory Act as amended by this Act, or notice, shall become illegible in any part, the occupier of the factory shall cause a new copy thereof to be provided and hung up as aforesaid. But the notice of lost time

o'clock, which was the limit of all. Instead of reckoning from half-past 5, you must reckon from the time when the first person began.—*Conviction quashed.*

(*p*) See a further notice required by the 13 & 14 Vict. c. 54, s. 6, *post*, p. 105.

(*q*) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(*r*) This refers to 3 & 4 W. 4, c. 103, s. 37, *ante*, p. 21, which is hereby repealed. But the provision in stat. 42 G. 3, c. 73, s. 12, *ante*, p. 6, remains in force.

(*s*) The form in the schedule C., *post*, p. 91, provides for the time of the working of young persons and females only. See also s. 9, *ante*, p. 37.

(*t*) For an information under this clause see *Ryder v. Mills*, 3 Ex. Rep.

853; S. C. 19 L. J. 82, M. C. But see 13 & 14 Vict. c. 54, s. 2, *post*, p. 102.

(*u*) By 13 & 14 Vict. c. 54, s. 1, *post*, p. 102, notice of the hours of work of all young persons and females above 18, as given in the form schedule C., is repealed.

(*x*) See sect. 33, *post*, p. 59.

(*y*) See as to notice of holidays, sect. 37, *post*, p. 62.

(*z*) Though it is not expressed by whom these notices are to be hung up, it is to be inferred that the occupier of the factory must do so, by himself or agent, as the former alone has the power to do so; and it is provided that he is to cause the notice to be renewed.

need not remain after the whole of the lost time intended to be recovered (t) shall have been recovered. And every notice required to be hung up shall be in the forms and according to the directions given in the schedule (C.) hereunto annexed (u).

29. *Children may be employed in factories at eight years of age.*] And be it enacted (x), That every child who shall have completed his 8th year (y), and shall have obtained the surgical certificate required by this Act of having completed his 8th year, may be employed in a factory in the same manner and under the same regulations as children who have completed their 9th year; but no child under 8 years of age shall be employed in any factory (z).

30. *Time of children's work.*] And be it enacted (a), That no child shall be employed in any factory more than 6 hours and 30 minutes in any one day (b), save as herein-after excepted, unless the dinner time of the young person in such factory shall begin at 1 o'clock, in which case children beginning to work (c) in the morning may work for 7 hours in one day (d). And no child who shall have been employed in a factory before noon of any day shall be employed in the same or any other factory, either for the purpose of recovering lost time (e) or otherwise, after 1 o'clock, p.m. (f) of the same day, save in the cases when children may work on alternate days (g), or in silk factories (h) more than 7 hours in any one day, as herein-after provided.

(t) It is however required by schedule C., *post*, p. 94, to be kept in a book for six months after the recovery of the lost time.

(u) Although no specific penalty is attached to an infraction of any of these regulations, yet the same is clearly an offence, and probably falls within s. 64, *post*, p. 75.

(x) Prosecutions have recently been instituted for a breach of this clause, and very heavy fines and costs imposed. See stat. 16 & 17 Vict. c. 104, *post*, p. 107, which specially relates to the employment of children.

(y) This is one of the great alterations of the statute 3 & 4 W. 4, c. 103, s. 7, *ante*, p. 12.

The present enactment makes it illegal to employ a child under 8 years of age in any factory, not excluding silk manufactories.

(z) See the penalty for employing a child too young, s. 56, *post*, p. 72.

(a) See stat. 16 & 17 Vict. c. 104, *post*, p. 107, which specially relates to the employment of children.

(b) See the penalties for overworking children, s. 56, *post*, p. 72. Prosecu-

tions have of late been successfully carried out for employing a child more than 6½ hours, and heavy fines and costs have been inflicted.

(c) See as to commencement of work, s. 36, *ante*, p. 52.

(d) There must in this time be allowed the statutory meal time. See sec. 36, *post*, p. 61.

(e) As to which see sect. 33, *post*, p. 59.

(f) The inspectors have with considerable zeal prosecuted all breaches of this law which have come to their knowledge, the result of each prosecution being the infliction of a fine and heavy costs.

(g) See sec. 31, *post*, p. 58.

(h) See as to this the exception in sec. 72, *post*, p. 79. It may be well to remark in regard to silk factories, that the 3 & 4 W. 4, c. 103, s. 1, *ante*, p. 9, renders all the provisions of that Act applicable to silk mills and factories, and the same effect is given by sec. 73, *post*, p. 80. But in sec. 7 of the former Act, which prohibits the employment of children under nine years of age, there is an exception of silk mills. In sec. 8, *ante*, p. 12, chil-

31. *How children may be employed on three alternate days of the week.*] And be it enacted, That in any factory in which the labour of young persons is restricted to 10 hours in any one day it shall be lawful to employ any child (i) 10 hours in any one day on 3 alternate days of every week, provided that such child shall not be employed in any manner in the same or in any other factory on two successive days, nor after $\frac{1}{2}$ past 4 o'clock, p.m., of any Saturday.

Provided always, that the parent or person having direct benefit from the wages of any child so employed shall cause such child to attend some school for at least 5 hours between the hours of 8 o'clock, a.m., and 6 o'clock, p.m., of the same day on each week day (k) preceding each day of employment in the factory, unless such preceding day shall be a Saturday, when no school attendance of such child shall be required (l).

Provided also, that on Monday in every week after that in which such child began to work in the factory, or any other day appointed for that purpose by the inspector of the district, the occupier of the factory shall obtain a certificate from a schoolmaster, according to the form and directions given in the schedule (A.) (m) to this Act annexed, that such child has attended school as required by this Act.

But it shall not be lawful to employ any child in a factory more than 7 hours in any one day, until the owner (n) of the factory shall have sent a notice in writing to the inspector of the district of his intention to restrict the hours of labour of young persons in the factory to 10 hours a day, and to employ children 10 hours a day, and if such occupier of a factory shall at any time cease so to employ children 10 hours a day, he shall not again employ any child in his factory more than 7

dren under 13 years are allowed to work in such mills 10 hours in any one day, which, according to the 4 & 5 W. 4, c. 1, s. 2, *ante*, p. 31, means every working day. The 29th sect. of this Act, *ante*, p. 57, prohibits all children under 8 years from working in any factory; but the provision in the text, when providing for the employment of children, except children working in silk factories, and sect. 78, *post*, p. 79, enables a child 11 years of age, employed solely in throwing or winding raw silk, to work 10 hours every day, except Saturday; but that is the only exception in regard to silk mills. In sched. (A.), *post*, p. 86, the certificate of age for children of the age of 13 is dispensed with in silk factories, where they work only 10 hours per day. See also stat. 10 & 11 Vict. c. 20, *post*, p. 98, as amended by 13 & 14 Vict. c. 54,

post, p. 100, and 16 & 17 Vict. c. 104, *post*, p. 107.

(i) See stat. 16 & 17 Vict. c. 104, *post*, p. 107, which specially relates to the employment of children.

(k) Probably this means *working day*.

(l) The effect of this proviso is to render the employment of the children for 10 hours on alternate days illegal, unless they are sent to school according to this provision, and a certificate of attendance of the school be obtained. See clauses 38 and 39, *post*, p. 62, respecting the schooling of children.

(m) See form, *post*, p. 86. Forms of this schedule may be obtained of Messrs. Shaw, the publishers of this volume.

(n) The word *owner* should here be rendered *occupier*.

hours in any one day until he shall have sent a further notice to the inspector in the manner herein-before provided.

32. *Women to be employed as young persons.*] And be it enacted (*o*), That no female above the age of 18 years shall be employed in any factory save for the same time and in the same manner as young persons may be employed in factories (*p*).

And that any person who shall be convicted of employing a female above the age of 18 years for any longer time or in any other manner shall for every such offence be adjudged to pay the same penalty as is provided in the like case for employing a young person contrary to law (*q*): Provided always, that nothing herein or in the Factory Act contained as to certificates of age shall be taken to apply to females above the age of 18 (*r*) years.

33. *Provision for recovering lost time by stoppage of the machinery.*] And be it enacted (*s*), That no time lost by accident or otherwise in any factory shall be made good or worked up by extension of ordinary hours of labour, save as is hereinafter provided; and that in any factory in which any part of the machinery is moved by the power of water, the time which shall have been lost by stoppages from want of water (*t*), or from too much water, may be recovered in manner following, within six months next after the stoppage (*u*), between the hours specified in the Factory Act (*v*) as those within which time lost by drought or excess of water may be recovered.

And in order to recover time so lost any child (*w*) or young person may be employed 1 hour in each day more than the time to which the ordinary daily labour of children and young persons

(*o*) See 10 & 11 Vict. c. 29, s. 3, *post*, p. 99, and 13 & 14 Vict. c. 54, *post*, p. 101.

(*p*) The time for employing young persons is set forth in stat. 3 & 4 W. 4, c. 103, ss. 1—6, *ante*, p. 9, and in ss. 85—87 of this Act, *post*, p. 60. In regard to the *manner* of the employment, secs. 19, 20, and 21, appear to be applicable.

Young persons are by this Act, sec. 73, *post*, p. 80, defined to be persons of 13 and under 18 years of age.

By the subsequent stat. 10 & 11 Vict. c. 29, s. 3, *post*, p. 99, the *restrictions* as regards the working of persons under 18 are extended to females above that age.

For the restrictions, see 3 & 4 W. 4, c. 103, s. 2, n. (*g*), *ante*, p. 10, and 10 & 11 Vict. c. 29, ss. 1 & 2, *post*, p. 99.

By the subsequent stat. 13 & 14 Vict. c. 54, s. 1, *post*, p. 102, no young person or female above 16 shall be employed in any factory before 6 o'clock,

a.m., save to recover lost time; and no *young person* and no *female* above 18 shall be employed to recover lost time, or for any other purpose, on any Saturday after 2 o'clock, p.m.

The 13 & 14 Vict. c. 54, s. 5, *post*, p. 104, further modifies the hours of working of young persons and females above 18 years of age.

(*q*) See the penalty, sec. 56, *post*, p. 72.

(*r*) Probably this means 16 years of age, see s. 9, *ante*, p. 87.

(*s*) See 3 & 4 Will. 4, c. 103, s. 3, *ante*, p. 11.

(*t*) This clause is recited and modified by 13 & 14 Vict. c. 54, s. 4, *post*, p. 103.

(*u*) See proviso to 3 & 4 W. 4, c. 103, s. 3, *ante*, p. 11.

(*v*) These appear, according to 3 & 4 W. 4, c. 103, s. 3, to be between 5, a.m., and 9, p.m.

(*w*) See 16 & 17 Vict. c. 104, which specially relates to the employment of *children*.

respectively is restricted by law (*x*), except on Saturdays (*y*). But it shall not be lawful so to recover any lost time until a notice shall have been sent by post to the sub-inspector of the district in which the factory is situated, stating the intention so to recover time that has been lost, nor unless a notice (*z*) according to the form and directions given in the schedule (C.) to this Act annexed shall have been previously (*a*) fixed up in the entrance of the factory, and in such other places as an inspector or sub-inspector may direct (*b*). And such notice shall be kept so fixed up during the whole time while the lost time is in course of being recovered. And such notice (*c*) shall be kept in a book as directed in the said schedule (C.) (*d*). Nor shall lost time be so recovered on two successive days, unless the amount of time recovered on any one day shall be inserted before 9 o'clock, a.m., of the following day in the last-mentioned notice (*e*).

34. *Provision for recovering time lost by partial stoppages.*] And be it enacted (*f*), That in any factory in which any part of the machinery is moved by the power of water, when the stream is so diminished by drought or swollen by flood during any part of the day that any part of the manufacturing machinery driven by the water-wheel has been stopped by reason of such drought or flood, the young persons (*g*) who would have been employed at such machinery may recover such lost time during the night next following the said day, unless the said day be Saturday.

Provided always, that no such young person shall be employed during any 24 consecutive hours for a greater number of hours than that to which the ordinary daily labour of such young persons in factories is otherwise restricted by law; and that no young person so employed in the night (*h*) shall work more

(*x*) That is 6½ hours for children, and 12 hours for young persons.

(*y*) See s. 35, *post*, p. 61, and see 13 & 14 Vict. c. 54, s. 4, *post*, p. 103, which modifies the time when such one hour is to be taken. Also stat. 16 & 17 Vict. c. 104, s. 3, *post*, p. 108, which relates to children.

(*z*) See form of notice, *post*, p. 93.

(*a*) That is before the occupier begins to recover the lost time.

(*b*) See s. 28, *ante*, p. 53.

(*c*) That is, after the lost time has been recovered. See sched. (C.) *post*, p. 94, wherein it is required that the notice shall be preserved for six months.

(*d*) Form of this notice may be obtained of Messrs. Shaw, the publishers of this volume.

(*e*) There is no specified penalty for neglect of these notices, but as they are conditions precedent to the employment of the workers, so an employment

without them becomes illegal, and punishable under s. 56, *post*, p. 73.

(*f*) See 3 & 4 W. 4. c. 103, s. 5, *ante*, p. 11, and 13 & 14 Vict. c. 54, s. 5, *post*, p. 104.

(*g*) This does not extend to children, and is confined to the young persons whose work had been interrupted. It does not authorize the employment of other young persons.

(*h*) By 13 & 14 Vict. c. 54, s. 5, *post*, p. 104, the word "night" includes the period between 6 o'clock, p.m., and 6 o'clock, a.m.; and also that no young person and no female above 18 years of age shall be employed to recover such lost time during any 24 consecutive hours for more than 10 and a half hours. But save as hereinafter mentioned, young persons and females may be employed to recover lost time according to the provisions of this Act.

than 5 hours, without an entire cessation from work of at least 30 minutes (*i*), but it shall not be lawful to recover any such lost time unless a notice according to the form and directions given in the schedule (C.) to this Act annexed shall have been previously (*k*) fixed up in the entrance of the factory, and in such other places as an inspector or sub-inspector may direct, and unless such notice be kept so fixed up during the whole time while the lost time is in course of being recovered. And such notice shall be kept in a book as directed in the said schedule (C.) (*l*).

35. *Work to cease on Saturday at half-past four.*] And be it enacted, That no child or young person shall be employed in a factory, either to recover lost time or for any other purpose, on any Saturday after half-past four o'clock, p. m. (*m*).

36. *Additional regulations as to meal times.*] And be it enacted (*n*), That the times allowed for meal time as provided by the Factory Act (*o*) shall be taken between half-past 7, a. m., and half-past 7, p. m., of every day, and one hour thereof at the least shall be given, either the whole at one time or at different times before 3 o'clock, p. m. (*p*).

And no child or young person (*q*) shall be employed more than 5 hours before 1 o'clock, p. m., of any day without an interval for meal time of at least thirty minutes.

And during any meal time which shall form any part of the 1½ hours allowed (*r*) for meals no child or young person shall be employed or allowed to remain in any room in which any manufacturing process is then carried on. And all the young persons (*s*) employed in a factory shall have the time for meals at the same period of the day (*t*), unless some alteration for special cause shall be allowed in writing by an inspector.

(*i*) This clause is recited and explained in 13 & 14 Vict. c. 54, s. 3, *post*, p. 104.

(*k*) See n. (*a*), *ante*, p. 60.

(*l*) See n. (*o*), *supra*, p. 60.

(*m*) The penalty for overworking on Saturday is in s. 56, *post*, p. 72. By 13 & 14 Vict. c. 54, s. 1, *post*, p. 102, and 16 & 17 Vict. c. 104, s. 1, *post*, p. 108, all working on Saturday after 2 o'clock, p. m., is illegal.

(*n*) The times for meals must begin as to all the work people at the same time. See *Ryder v. Mills*, 3 Exc. 868, 870, *ante*, p. 53, n. (*o*).

(*o*) See 3 & 4 W. 4, c. 103, s. 6, *ante*, p. 12. Various prosecutions have of late been successful against mill occupiers for violating this clause.

(*p*) This clause, so far as regards the hours at which the meals are to be had,

is repealed and modified by 13 & 14 Vict. c. 54, s. 3, *post*, p. 103.

(*q*) On reference to the former statute, 3 & 4 W. 4, c. 103, s. 6, *ante*, p. 12, it will be seen that the allowance of the times for meals did not in terms apply to children, but to *young persons only*. By 13 & 14 Vict. c. 54, s. 8, *ante*, p. 106, every *young person* and *female above 18 years of age*, employed or allowed to remain in the factory during *meal times*, is held to be employed contrary to the Factory Acts. See stat. 16 & 17 Vict. c. 104, s. 4, *post*, p. 109, as to meal times of children.

(*r*) By stat. 3 & 4 W. 4, c. 103, s. 6, *ante*, p. 12. See *Ryder v. Mills*, 3 Exc. 868, per Alderson, B.; S. C. 19 L. J. 62, M. C., *post*, p. 53, n. (*o*).

(*s*) The Act is silent as to children.

(*t*) No penalty is imposed to enforce this provision.

37. *Additional regulations as to holidays.*] And be it enacted, That each of the half holidays required by the Factory Act (i) to be given shall comprise not less than one half of the day, and during such time no young person (k) shall be employed in the factory.

And that at least four of such half holidays shall be given between the 15th of March and the 1st of October in each year to every young person (k) who shall be employed in the factory during the whole of such period (l); but no cessation from work shall be deemed a half holiday, unless notice of such half holiday, and of the time of such cessation from work, shall have been fixed up on the preceding day in the entrance of the factory, and in any other place that the inspector or sub-inspector may direct (m).

And that in addition to such eight half days no child or young person shall be allowed to work in any factory on Christmas-day or Good Friday, in *England* or *Ireland*; and in *Scotland* no child or young person shall be allowed to work on any day the whole of which is set apart by the church of *Scotland* for the observance of the sacramental fast in the parish in which the factory is situated (n).

38. *Additional regulations for the attendance of children at school.*] And be it enacted (o), That, save as herein otherwise provided (p), the parent or person having any direct benefit from the wages of any child employed in a factory shall cause such child to attend some school (q) on the day after the first employment of such child, and thenceforth on each working day of every week during any part of which the said child shall continue in such employment (r); so that on every such day (s) (except in the cases hereinafter provided) such child shall

(i) The 3 & 4 W. 4, c. 103, s. 9, *ante*, p. 13, requires that not fewer than eight shall be given.

(k) It may be observed that children are omitted. See the penalty in s. 66, *post*, p. 72; and sec. 44, *post*, p. 67, as to the limitation of time in regard to complaints.

(l) The stat. 3 & 4 W. 4, c. 103, s. 9, *ante*, p. 13, left it to the master to fix the periods, which was found to lead to frauds on the statute.

(m) See sec. 28, *ante*, p. 53.

(n) See stat. 10 & 17 Vict. c. 104, *post*, p. 109, which reserves the holidays of children.

(o) See 3 & 4 W. 4, c. 103, s. 90, *ante*, p. 18. This section and the succeeding one as to *schooling* apply to *children* only, i.e. persons under 13 years of age. See *Ryder v. Mills*, 3 Exc. 864, 865; 8 C. 19 L. J. 52, M. C. Various prose-

cutions have of late been successfully instituted against parents neglecting to cause their children to attend school, and heavy fines and costs have been invariably inflicted. These prosecutions would be prevented if mill occupiers were to follow the laudable conduct of some of the Scotch manufacturers, and erect and endow factory schools, as detailed by Inspector Sir J. Kinnaird, in his report for April, 1855.

(p) See the excepted cases where children work ten hours on alternate days, sec. 31, *ante*, p. 58.

(q) See 42 G. 3, c. 73, s. 6, *ante*, p. 3.

(r) The excepted cases are stated in a subsequent part of this section.

(s) As to the penalties for neglecting to cause children to attend school, see sec. 57, *post*, p. 73.

attend school during at least 3 hours after 8 o'clock, a. m., and before 6 o'clock, p. m.

Provided always, that any child attending school after 1 o'clock, p. m., shall not be required to remain in school more than $2\frac{1}{2}$ hours on any one day between the 1st of November and the last day of February, and no child shall be required to attend school on any Saturday, and the non-attendance of every such child shall be excused on every day on which such child shall be certified by the schoolmaster to have been prevented by sickness or other unavoidable cause from attending the school, and during any holiday or half holiday authorized by this Act (*t*), or by consent in writing of the inspector of the district in which the factory is situated, or, where the school-room is situated within the outer boundary of the factory at which such child is employed, on every day on which the school shall be closed in consequence of the said factory ceasing to be at work during the whole day.

39. *Occupier of factory to obtain school certificate, and to pay school fees.*] And be it enacted, That no schoolmaster's tickets or vouchers (*u*) shall be required or valid other than is herein-after provided, and that the occupier (*v*) of every factory in which a child (*w*) is employed shall on Monday in every week after the first week in which such child began to work in the factory, or on any other day appointed for that purpose by an inspector, obtain a certificate from a schoolmaster, according to the form and directions given in the schedule (A.) (*x*) to this Act annexed, that such child has attended school as required by this Act during the foregone week (*y*).

And such occupier shall keep such certificate for six months after the date thereof (*z*), and shall produce the same to any inspector or sub-inspector when required during such period, and shall, when required by the inspector for the district, pay to the schoolmaster of such child, or to such other person as the said inspector may direct, towards the expenses of educating such child, such sum as the inspector may require, not exceeding two pence per week, and shall be entitled to deduct from the wages

(*t*) The holidays were required by 3 & 4 W. 4, c. 103, s. 9, *ante*, p. 13, though additional regulations are prescribed by sec. 37, *ante*, p. 62.

(*u*) These were required by stat. 3 & 4 W. 4, c. 103, s. 21, *ante*, p. 19. Prosecutions have lately been successfully laid for a violation of this provision.

(*v*) The occupier of the factory is now required to obtain the certificate. In 3 & 4 W. 4, c. 103, s. 21, *ante*, p. 19, the child was to give it to the occupier and consequently to procure it.

(*w*) This clause as to schooling applies to children only, i. e. persons under 13 years of age. See sec. 73, *post*, p. 80.

(*x*) Form of school certificates may be obtained of Messrs. Shaw, the publishers of this volume.

(*y*) See the penalty for employing the child without the certificate, s. 56, *post*, p. 73.

(*z*) The occupier is required by the directions in sched. A., *post*, p. 86, to keep them in a book.

payable to such child any such sum as he shall have been required to pay for such expenses, not exceeding the rate of one twelfth part of the weekly wages of such child (a).

Inspector may, by notice, annul the certificate of any schoolmaster found unfit.] Provided always, that if an inspector, on his personal examination, or on the report of a sub-inspector, shall be of opinion that any schoolmaster who grants certificates of the school attendance of children employed in a factory is unfit to instruct children, by reason of his incapacity to teach them to read and write, from his gross ignorance, or from his not having the books and materials necessary to teach them reading and writing, or because of his immoral conduct, or of his continued neglect to fill up and sign the certificates of school attendance required by this Act, the inspector of the district may annul any certificate granted by such disqualified schoolmaster, by a notice in writing addressed to the occupier of the factory in which the children named in the certificate are employed, or his principal agent, setting forth the grounds on which he deems such schoolmaster to be unfit.

And after the date of such notice no certificate of school attendance granted by such schoolmaster shall be valid for the purposes of this Act, unless with the consent in writing of the inspector of the district. But no inspector shall annul any such certificate unless in the aforesaid notice he shall name some other school situated within 2 miles of the factory where the children named in the certificate are employed.

Appeal.] Provided also, that any schoolmaster whose certificate shall have been annulled, or the occupier of the factory in which the children named in the said certificate are employed on behalf of the schoolmaster, may appeal to the secretary of state against such decision of the inspector, and the secretary of state may, if he think fit, rescind such decision (b) : provided also, that every inspector shall in his annual report (c) to the secretary of state for the home department state the instances (if any) in which he shall have had occasion to annul any such certificate, together with the reasons which he has in each case assigned for so doing.

(a) The 3 & 4 W. 4, c. 103, s. 20, *ante*, p. 18, limited the sum to one penny in every shilling. If the schooling exceed the sum mentioned in the above section, the occupier of the factory must pay the difference himself.

(b) There is a difficulty as to what is to be done pending the appeal. The best course appears to be for the inspector to consent to the certificate being granted by the schoolmaster until the

appeal is determined. The children might indeed attend the other school named, but if the appeal be decided in favour of the schoolmaster, he would have suffered a great injury.

(c) This probably means the half yearly report required by the 3 & 4 W. 4, c. 103, s. 45, *ante*, p. 26. The reports, as stated *ante*, p. 16, n. (a), are made to the principal secretary of state for the home department.

40. *Repeal of part of 3 & 4 W. 4, c. 103.*] And be it enacted, That so much of the Factory Act (*d*) as limits the time for preferring complaints for offences against the said Act, and as requires any written notice to be given of the intention to prefer any complaint for such offence (*d*), and as fixes any penalty or punishment for offences against the said Act (*e*), and as relates to the procedure for convicting any person of any offence against the said Act (*f*), and for levying or inflicting the penalty or punishment imposed, and for appealing against any such conviction (*g*), and as specifies the circumstances under which any penalties and punishments shall not be levied or inflicted (*h*), and as relates to the application of penalties, shall be repealed (*i*).

41. *Occupier of the factory to be liable for offences against this Act in the first instance*]. And be it enacted, That the occupier of any factory in which any offence against this Act (*k*) has been proved to have been committed, and for which a pecuniary penalty may be imposed, shall in every case (save as hereinafter (*l*) provided) be deemed in the first instance to have committed the offence, and shall be liable to pay the penalty.

But any occupier who shall have been proceeded against by any inspector or sub-inspector (*m*) shall be entitled, upon complaint or information duly made by such occupier, to have any agent, servant, or workman whom he shall charge as the actual offender brought by summons before the justices at the time appointed for hearing the complaint made against him by the inspector or sub-inspector.

And if after the commission of the offence has been proved the occupier of the factory shall prove, to the satisfaction of the justices, that he had used due diligence to enforce the execution of the Act, and that the said agent, servant, or workman (*n*) had committed the offence in question, without his knowledge, consent, or connivance, the said agent, servant, or workman shall be convicted of such offence, and shall pay the penalty instead of the occupier of the factory. And the payment of such penalty and costs shall be enforced against the agent, servant,

(*d*) See 3 & 4 W. 4, c. 103, s. 35, *ante*, p. 23.

(*e*) See 3 & 4 W. 4, c. 103, ss. 28, 29, 31, 32, *ante*, p. 21.

(*f*) See 3 & 4 W. 4, c. 103, ss. 34, 36, *ante*, pp. 23, 24.

(*g*) See 3 & 4 W. 4, c. 103, s. 42, *ante*, p. 25.

(*h*) See 3 & 4 W. 4, c. 103, s. 31, *ante*, p. 22.

(*i*) See 3 & 4 W. 4, c. 103, s. 43, *ante*, p. 26.

(*k*) This includes the 3 & 4 W. 4, c. 103. See sec. 73, *post*, p. 80.

(*l*) These provisions are included in this clause.

(*m*) This power is not given when the complaint is laid by any other person than an inspector or sub-inspector.

(*n*) This clause has very properly been enforced on various occasions, and the guilty parties fined large sums of money, together with heavy costs.

or workman in like manner as penalties are made recoverable by this Act (o).

Provided always, that when it shall be made to appear to the satisfaction of the inspector or sub-inspector, at the time of discovering the offence, that the occupier of the factory had used all due diligence to enforce the execution of this Act, and also by what person such offence had been committed, and also that it had been committed without the personal consent, connivance, or knowledge of the occupier, and in contravention of his orders (p), then the inspector or sub-inspector shall proceed against the person whom he shall believe to be the actual offender in the first instance, without first proceeding against the occupier of the factory.

42. *Notice of complaints of unguarded machinery.*] And be it enacted, That notice in writing of an intention to prefer a complaint that a child or young person had been employed in a factory in which sufficient means had not been employed or continued for protecting the workers (q) from being wetted, or for preventing the escape of steam into the room occupied by the workers, or that any part of the aforesaid machinery, hoist, or teagle, or wheel-race, has not been securely fenced (r), shall be given (s) 4 days at least previous to the day fixed for hearing the complaint. And if the party complained against intend to bring forward any millwright or other person skilled in the construction of the aforesaid machinery as a witness at the hearing of the case, he shall give notice in writing of such intention to the inspector or sub-inspector who shall be the complainant 48 hours previous to the day fixed for hearing the case (t).

43. *Inspector or sub-inspector to give notice of dangerous machinery.*] And be it enacted (u), That if an inspector or sub-inspector shall observe in a factory any part of the machinery of any kind or description, or any driving strap or band, not securely fenced, which he shall deem likely to cause bodily in-

(o) See also 3 & 4 W. 4, c. 103, s. 30, *ante*, p. 22.

(p) This proviso is properly introduced to prevent circuity of proceedings, as in most cases the agent commits the offence without the occupier's consent, as where the latter may not have given any order on the subject. To obviate all objection on the agent's part, and to bring him within the proviso, the occupier should give the agent general directions to strictly carry out and fulfil every requirement of this Act, so that the commission, by an agent so directed, of any deed contrary to this Act, would also be committed in contravention of the orders of the occupier.

(q) See s. 19, *ante*, p. 43.

(r) See s. 21, *ante*, p. 44.

(s) See the service of this notice, s. 51, *post*, p. 71.

(t) It will be observed that this notice is to be given by the defendant to the inspector or sub-inspector only when complainant, so that the section seems to exclude such a notice where any other person is complainant.

(u) See clause 21, *ante*, p. 44. The court of Exchequer Chamber has held that this clause has reference to those cases only where there is no fencing whatever. See *Cox v. Platt*, Exchequer Chamber, per Patteson, J., *ante*, p. 48, n. (t).

jury to any person employed in such factory, he shall give notice in writing (*x*) to the occupier of such factory or his agent of such part of the machinery, or such strap or band, as he shall deem to be dangerous, according to the form and directions given in schedule (D.) (*y*) to this Act annexed (*z*); and the occupier of the factory, or his agent, shall sign a duplicate copy of such notice in acknowledgment of his having received it.

Upon application by the occupier arbitrators may be appointed to examine the machinery.] Provided always, that upon an application in writing made by the occupier of the factory, within 14 days after he shall have received such notice, two arbitrators skilled in the construction of the kind of machinery to which such notice refers shall be appointed, one of whom shall be named by the occupier of the factory in the aforesaid application, and the other by the inspector of the district, with the least possible delay after he shall have received such application. And the said arbitrators shall proceed to examine the machinery alleged to be dangerous within 14 days of the appointment of the arbitrator named by the inspector. And if the arbitrators so appointed shall not agree in opinion the said arbitrators shall choose a third arbitrator possessing a similar knowledge of machinery. And if the said arbitrators, or any two of them, shall sign an opinion in writing addressed to the inspector of the district, that it is unnecessary or impossible to fence the machinery, or strap or band, alleged in the notice to be dangerous, the inspector of the district on receipt of the same shall cancel the said notice (*a*). And if the decision of the arbitrators shall be that it is unnecessary or impossible to fence the machinery so alleged to be dangerous, the expense of such reference shall be paid as other expenses under this Act (*b*). But if the decision of the arbitrators shall be that it is necessary and possible to fence the said machinery, then the expenses of the reference shall be paid by the occupier of the factory, and shall be recoverable as the penalties under this Act are recoverable (*c*).

44. *Complaints to be preferred within two months.]* And be it enacted, That all complaints for offences against this Act shall be preferred within two months (*d*) next after the commission of the offence, except in the case of complaints for offences punishable at discretion by fine or imprisonment, or for working

(*x*) See note (*u*), *ante*, p. 66.

(*y*) Forms of notice may be obtained of Messrs. Shaw, the publishers of this volume.

(*z*) If after such notice any accident occur, the occupier will be liable to a penalty. See s. 60, *post*, pp. 74, 94.

(*a*) The cancelling of this notice will

relieve the party from the penalty.

See s. 60, *post*, p. 74.

(*b*) See note (*a*) to s. 24, *ante*, p. 52.

(*c*) See s. 60, *post*, p. 74.

(*d*) These are calendar months; see s. 73, *post*, p. 81. When notice of complaint is required, see s. 42, *ante*, p. 66.

on Christmas-day, Good Friday, or the sacramental fast days, or for not giving all or any of the 8 half days for holidays required to be given, in each of which cases the complaints may be preferred within 3 months next after the commission of the offence.

And no person shall be liable to a larger amount of penalties for any repetition from day to day of the same kind of offence than the highest penalty herein-after named for such offence, unless such repetition of offence shall have been committed after a complaint shall have been made for the previous offence, and except also for offences of employing two or more children or young persons contrary to law (e).

45. *Proceedings under this Act may be had before any justices.*] And be it enacted, That all complaints for the enforcement of any penalty under this Act shall be heard and determined by two or more justices of the peace acting for the county or other jurisdiction wherein the offence was committed, or for any adjoining county or jurisdiction, with the like authority as though the cause of complaint had arisen within such adjoining county or jurisdiction, provided that the place of hearing the complaint in such other county or jurisdiction be not more than 5 miles from the place where the offence was committed.

Penalties may be recovered as in 5 G. 4, c. 18.] And the justices by whom any person shall be fined for any offence against this Act may order that such person shall pay the penalty, and also the reasonable costs and charges of such proceedings and conviction, either immediately or within such time as the said justices shall think fit.

Power of distraining goods in factory where occupier is convicted.] And in default of payment thereof any justice may cause the same to be levied by distress and sale of the goods and chattels of the party convicted, together with the reasonable costs and charges of such conviction, distress and sale, by warrant under the hand and seal of any such justice. And where the warrant of distress is directed against the goods and chattels of any person being the occupier of a factory, it shall be lawful under such warrant to distrain any goods and chattels found in the said factory which would be liable to be distrained for rent in arrear.

46. *Issue of summons for offences against Act.*] And be it enacted, That in *England* and *Ireland* a summons for an offence against this Act (f) shall be issued by any justice, upon com-

(e) This section does not authorize a commitment in default of distress.

(f) This includes the stat. 3 & 4 W. 4, c. 103. See s. 78, *post*, p. 80. By 11 &

12 Vict. c. 43, s. 35, proceedings under the 'Factory Acts' are exempted from that statute.

plaint being made to him in writing by an inspector or sub-inspector, or upon oath before him by any other person, that to the best of the knowledge and belief of the inspector, sub-inspector, or such other person such an offence has been committed, and in *Scotland* a summons for an offence against this Act shall be issued by any justice upon complaint being made to him in writing by an inspector or sub-inspector, or by the procurator fiscal, or by any person having a title and interest to prosecute with the concurrence of the procurator fiscal, that to the best of the knowledge and belief of such inspector, sub-inspector, procurator fiscal, or other person, such an offence has been committed. And in every such prosecution in *Scotland* the proceedings shall be summary, and it shall not be necessary to take down in writing more than the substance of the evidence. And no higher or other fees shall be allowed in *Scotland* to the clerk of court or constables than are allowed to be paid to the sheriff clerk and sheriff officers in causes and prosecutions under the authority of the 10 G. 4, c. 55, intituled *An Act for the more effectual Recovery of Small Debts, and for diminishing the Expenses of Litigation in Causes of small Amount in the Sheriff Courts in Scotland*.

47. *Compelling parties to appear and bring register.*] And be it enacted, That every person who shall be summoned to answer any complaint shall be bound to appear at the time and place mentioned in the summons, and to produce before the justices then and there present every register or other account, paper, or notice required by law to be kept by him or his agent, which shall be mentioned in the summons. And if he shall not appear accordingly then (upon proof of due service of the summons) (g) the justices may either hear and determine the case in his absence, or issue their warrant, as herein-after provided (h), for enforcing his attendance, and the attendance of any witness who shall refuse or neglect to appear.

48. *Inspectors and sub-inspectors competent witnesses.*] And be it declared and enacted, That it shall be no objection to the competency of any inspector or sub-inspector to give evidence as a witness in any prosecution under this Act that it is brought at the instance of such inspector or sub-inspector (i).

49. *Justices may enforce attendance of witnesses.*] And be it enacted (h), That any justice of the peace, upon any com-

(g) If the justices proceed in the absence of the defendant, service either personal or constructive, according to sec. 51, *post*, p. 71, will suffice. If they issue their warrant they must require the summons to have been served personally. See sec. 49, *post*, p. 70.

(h) See s. 49, *post*, p. 70.

(i) The subsequent Evidence Acts have rendered this clause unnecessary.

(h) This clause is very oddly expressed, and therefore its construction not only difficult but doubtful. The 11 & 13 Vict. c. 43, s. 35, except proceedings under the Factory Acts from that statute.

plaint under this Act, may summon any witness to appear and give evidence at a time and place appointed for hearing such complaint, and by warrant under his hand and seal may require any person to be brought before the justices by whom the complaint shall be heard who shall neglect or refuse to appear at the time and place appointed in any summons, proof upon oath being first given of personal service of the summons upon the person against whom such warrant shall be granted, and may commit any person coming or brought before such justices who shall refuse to give evidence to the county prison or prison of the place where such offence (*l*) was committed, there to remain for any time not exceeding one month (*m*), or until such person shall sooner submit himself to be examined. And in case of such submission the order of any justice shall be a sufficient warrant to any goaler or prison keeper for the discharge of such person.

50. *Inspectors and sub-inspectors may summon offenders and witnesses.*] And be it enacted, That every inspector and sub-inspector shall be empowered to summon any person whom he shall charge with having offended against this Act, and also all witnesses who may be needed to give evidence concerning the charge. And every such summons shall be of the same effect as if issued by a justice of the peace after complaint upon oath before him, and shall be enforced in like manner, and the like proceedings may be had thereupon, as if complaint upon oath had been made before such justice for such offence. And every constable and other peace officer to whom any such summons shall be directed shall be bound to take charge of and to serve such summons, and in default thereof shall be liable to be punished as if the summons had been issued by a justice of the peace. And every such summons of an offender or witness may be in the form provided in each (*n*) case, and given in the schedule (D.) hereto annexed (*o*). And when an inspector or sub-inspector shall summon an offender he shall give to the same constable or peace officer a statement of the offence alleged to have been committed, who shall deliver it to a justice of the peace usually acting for the division (*p*) in which the case is to be heard, or to the clerk of any such justice, at least 24 hours before the period named in the summons for the appearance of the party charged with such offence (*q*).

(*l*) Does this mean the offence which is the subject of the complaint, or the offence of the witness in not properly answering?

(*m*) This means *calendar* months. See s. 78, *post*, p. 81.

(*n*) Read '*such*'.

(*o*) Forms of summons may be ob-

tained of Messrs. Shaw, Pether Lane, London, the publishers of this volume.

(*p*) That is, the petty sessional division.

(*q*) The object of this provision is to supply the justices with previous knowledge of the nature of the case to be heard by them. The justice who re-

51. *In case of partnership, one name sufficient for summons.]* And be it enacted, That it shall be sufficient, in any information, complaint, or other proceeding under this Act, to set forth the name of the ostensible occupier or title of the firm by which the occupier employing the workpeople of the factory may be usually known.

And the service of any summons, order, or notice required by this Act, or issued under the authority of this Act, (and not expressly directed to be personal service,) may be made (r) by leaving the same at the dwelling house of the person to whom the same shall be addressed, or, in the case of summoning or giving an order or notice to the occupier of a factory or to a schoolmaster, by giving a copy thereof in writing to the agent (s) of such occupier, or by sending a copy thereof by the post directed to the occupier of the factory at the factory, or to the schoolmaster at his school.

52. *Evidence of employment.]* And be it enacted, That in any complaint of the employment of any person in a factory otherwise than is allowed by this Act, the time of beginning work in the morning which shall be stated in any notice fixed up in the factory, signed by the occupier or his agent, shall be taken to be the time when all persons in the factory, (except children beginning to work in the afternoon,) began work on any day subsequent to the date of such notice, so long as the same continued fixed up in the factory (t).

And if any person shall be allowed to enter or be in any factory, except at meal times, or during the stoppage of the whole machinery of the factory, or for the sole purpose of bringing tea or other articles of food to the workers in a factory, between the hours of 4 and 5 o'clock, p.m. (u), it shall be evidence, unless the contrary shall be proved, that such person was then employed in that factory. But yards, play grounds, and places open to the public view, school rooms, waiting rooms, and other rooms belonging to the factory, in which no machinery is used or manufacturing process carried on, shall not be taken to be any part of the factory, with reference to this enactment.

53. *Surgical certificates to be proof of age.]* And be it enacted, That every surgical certificate given under this Act, or which has been granted conformably to the Factory Act, and which shall not have been annulled, shall be evidence in the first

sees it should therefore attend or forward the statement so received to the petty sessions.

(r) This does not exclude any other mode of service which the case allows, independent of this provision.

(s) See definition of agent in s. 78, *post*, p. 81.

(t) This portion of the clause is repealed by 13 & 14 Vict. c. 54, s. 2, *post*, p. 102.

(u) This passage refers to the persons bringing food, therefore if any persons come at any other time in the day for such purpose, it lies upon the occupier of the factory to prove that they came for such purpose.

instance of the age of the person named therein (*a*), but shall not protect any person, knowing such person to be of less than the age certified, from any penalty for employing or conniving at the employment (*b*) of such person otherwise than is allowed by this Act. And in every proceeding on any information or complaint for employing any person contrary to this Act, a declaration in writing by the certifying (*c*) surgeon of the district that he has personally examined such person, and believes him to be under such age as shall be set forth in such declaration, shall be evidence, in the first instance, until the contrary shall be made to appear, that such person is under the age mentioned in such declaration.

54. *Proof of age of persons alleged to be sixteen.*] And be it enacted, That if any inspector or sub-inspector shall make a complaint before a justice of the peace that the real age of any person who is employed in a factory (*d*) without a surgical certificate is less than 16, the occupier of the factory in which such person is employed shall be liable to the penalties for employing persons for whom a surgical certificate is required by law without the proper surgical certificate, unless, upon the proceeding for the enforcement of such penalties, he shall prove, by an extract from a legal register of birth or baptism, that the said person had completed his 16th year of age (*e*).

55. *Proof of age of persons alleged to be eighteen.*] And be it enacted, That if an inspector or sub-inspector shall make a complaint before a justice of the peace that the real age of any person employed in a factory in a manner contrary to law is less than 18, the occupier of the factory in which such person is employed shall (save in the cases herein-after excepted) (*f*), be liable to the penalty for employing such person, unless upon the proceeding for the enforcement of such penalties he shall prove that the said person had completed his 18th year (*g*).

56. *Penalties for employing children and young persons longer than allowed by the Act.*] And be it enacted, That any

(*a*) See the interpretation of this word in the interpretation clause, s. 73, *post*, p. 50.

(*b*) There does not appear to be any penalty prescribed for conniving at the employment. See sec. 63, *post*, p. 75, which provides for connivance at the making of false certificates or entries.

(*c*) It seems that this declaration need not be made before the justices, but that they may act upon the declaration in writing when produced before them. They must, however, have evidence that the declarant is the certifying surgeon, and that the declaration is signed by him. It will be well, therefore, that the declaration should be attested.

(*d*) Except in certain silk factories. See schedule (A.) *post*, p. 85.

(*e*) The stat. 3 & 4 W. 4, c. 103, s. 15, *ante*, p. 15, allowed the penalty to be remitted if the inspector or justice were satisfied that the child was of the proper age. This clause requires the master to prove this fact in a specific manner.

(*f*) It is not clear what the excepted cases are.

(*g*) The mode of proof is not limited here, as under sect. 54, *supra*. But the clause is apparently incomplete. There is no penalty for simply employing a person under 18.

person who shall be convicted of having employed any person in any manner contrary to the provisions of the Factory Act (*a*) as amended by this Act, or for employing a child without having obtained a certificate from a schoolmaster where such certificate is required by law (*b*), such person not being the parent (*c*) nor having any direct benefit from the wages of such child, shall for every such offence be adjudged to pay a penalty of not less than 20s. and not more than 3*l*. for each child or young person so illegally employed: Provided always, that if it shall be proved that such offence was committed during the night the penalty shall not be less than 40s. nor more than 5*l*. (*d*).

57. *Penalty on parents for allowing children to be employed contrary to this Act, or neglecting to cause them to attend school.*] And be it enacted, That the parent and every person having any direct benefit from the wages of any child or young person employed in any manner forbidden by the Factory Act (*e*) as amended by this Act, or who shall neglect to cause such child to attend school as herein-before provided (*f*), shall be liable to a penalty of not less than 5s. and not more than 20s. for each offence, unless it shall appear to the justices before whom the complaint is preferred that such offence has been committed without the consent, connivance, or wilful default of such parent or person so benefited.

58. *Penalty for not lime-washing or otherwise washing the interior of the factory.*] And be it enacted, That the penalty for not lime-washing the walls, passages, staircases, and ceilings or tops of rooms of a factory, within the period prescribed by this Act (*g*), or for not washing, as herein-before provided, the inside walls and ceilings or tops of rooms which are painted with oil, shall not be less than 3*l*. nor more than 10*l*., and not less than 2*l*. additional penalty for every month (*h*) during which the occupier shall allow any of the said walls, passages, staircases, or ceilings or tops of rooms to remain without being lime-washed or washed as aforesaid, after being convicted of this offence.

59. *Penalty for not fencing machinery.*] And be it enacted, That the penalty for not fencing the several parts of the ma-

(*a*) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(*b*) See sect. 30, *ante*, p. 63.

(*c*) As to whom, see next clause.

(*d*) In many cases mill occupiers have been prosecuted for offending against this clause.

(*e*) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(*f*) See sect. 38, *ante*, p. 62. The phraseology of this clause is somewhat obscure; but it seems that the parent is liable to the penalty if he suffer the child, or young person, to be employed contrary to the Act, or if he neglect to

cause the child to be sent to school. It will be found that the parent has seldom much control over those designated as *young persons* in this Act. See the sect. 73, *post*, p. 80, for the interpretation of the word *parent*.

In various cases, however, the parents have been prosecuted with success for offending against these provisions.

(*g*) See sect. 18, *ante*, p. 43.

(*h*) That is *calendar* month. See sect. 73, *post*, p. 81.

chinery, hoist, or teagle, and wheel-race, required by this Act to be fenced (*a*), shall not be less than 5*l*. and not more than 20*l*.

60. *Penalty for not fencing dangerous machinery after notice.*] And be it enacted (*b*), That if any person shall suffer any bodily injury in consequence of the occupier of a factory having neglected to fence any part of the machinery, or any hoist or teagle, or any wheel-race required by this Act to be securely fenced; or having neglected to fence any part of the machinery, or any driving strap or band, in the factory, of which he shall have received notice in writing from an inspector or sub-inspector, as herein-before provided (*c*), that the same was deemed to be dangerous, the occupier of such factory shall pay a penalty not less than 10*l*. and not more than 100*l*.; and the whole or any part of such penalty may be applied for the benefit of the injured person, or otherwise as the Secretary of State shall determine. And so much of such penalty as shall not be applied as aforesaid shall be applied as other penalties under this Act (*d*).

Provided always, that the occupier of the factory shall not be liable to any such penalty if the notice which he shall have received from an inspector or sub-inspector shall have been cancelled as herein-before provided (*e*), or that in any proceeding against an occupier of a factory for not securely fencing that part of the machinery, hoist, teagle, or wheel-race by which such bodily injury was inflicted the complaint shall have been heard and dismissed previous to the time when such bodily injury was inflicted.

61. *Penalty for obstructing inspectors or sub-inspectors.*] And be it enacted, That every person convicted of wilfully obstructing an inspector or sub-inspector in the execution of any of the powers intrusted to him by the Factory Act (*f*) as amended by this Act (*g*) shall be liable for each offence to a penalty not less than 3*l*. and not more than 10*l*.

62. *Penalty for obstructing inspectors or sub-inspectors in the night.*] And be it enacted, That every occupier of a factory in which an inspector or sub-inspector shall be obstructed in the night by any attempt to prevent his making a full and complete examination of all parts of the factory, and of every person

(*a*) See sect. 21, *ante*, p. 44. Several prosecutions have been instituted for a breach of this clause, and fines and heavy costs imposed. See penalty on conviction for second offence of the same kind, sect. 65, *post*, p. 75.

(*b*) See sect. 21, *ante*, p. 44. Several prosecutions have been successfully instituted under this clause, and heavy penalties and costs inflicted.

See penalty on conviction for second offence of the same kind, sect. 65, *post*, p. 75.

(*c*) See sect. 43, *ante*, p. 66.

(*d*) See sect. 66, *post*, p. 76.

(*e*) *Ante*, n. (*a*), p. 67.

(*f*) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(*g*) See sect. 3, *ante*, p. 34.

employed therein, shall be liable to a penalty not less than 20*l.* and not more than 50*l.* (a).

63. *Offences which shall be punishable by fine or imprisonment.*] And be it enacted, That every person convicted of making, giving, signing, countersigning, counterfeiting, or making use of any certificate authorized or required by the Factory Act (b) or by this Act, knowing the same to be untrue, or of wilfully making or wilfully conniving at the making any false or counterfeited certificate, or any false entry in any register (c), or any other account, paper or notice required by this Act, and also every person convicted of wilfully making and signing a false declaration on any proceedings under this Act, shall be liable to a penalty not less than 5*l.* and not more than 20*l.*, or to be imprisoned for any time not more than 6 months (d) in the house of correction (e) in the county, town, or place where the offence was committed.

64. *Penalty for offences not otherwise specified.*] And be it enacted, That the penalty for any offence against the Factory Act (f) as amended by this Act, for which no specific penalty is herein-before provided, shall be any sum not less than 2*l.* and not more than 5*l.* (g).

65. *Penalty in case of second and subsequent convictions.*] And be it enacted (h), That every person who shall be convicted twice within 12 months (i) for an offence of the same kind against the Factory Act (k) as amended by this Act (l) shall pay for his second offence any sum not less than one-half of the highest penalty for that offence, and if convicted three times within 12 months for an offence of the same kind he shall pay not less than two-thirds of the highest penalty, and if convicted more than three times within 24 months for an offence of the same kind, he shall pay the highest penalty. But a repetition of the same kind of offence shall not be considered as the second or subsequent offences referred to in this enactment, unless

(a) Note, that under this clause the occupier of the factory is made responsible for any obstruction in the night, whether he personally obstruct or not. But probably he will be able to avail himself of the provisions in sect. 41 for his exoneraton.

(b) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(c) Prosecutions have been instituted for a breach of this clause, and heavy fines and costs imposed.

(d) This means calendar months. See s. 73, *post*, p. 81.

(e) It seems that the commitment to the county or borough gaol would be warranted, though it may not be what is commonly termed a house of correction.

See stat. 27 G. 3, c. 11, and *Ex parte Aston*, 13 L. J., M. C., 52.

(f) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(g) See 3 & 4 W. 4, c. 103, s. 32, *ante*, p. 23.

(h) See 3 & 4 W. 4, c. 103, s. 32, *ante*, p. 23.

(i) See n. (b) to clause 63.

(k) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(l) As the interpretation clause, s. 73, incorporates the former Act with the present, it may perhaps be held, that this section applies to the repetition of offences prohibited by this Act and not contained in the Factory Act. But this is very doubtful, as the question depends upon the construction of a penal clause.

such second or subsequent offences shall have been committed after a complaint has been made for the previous offences.

And in any case in which a person shall be convicted at any one time for offences against the Factory Act (*a*) as amended by this Act, so that the penalties amount in the whole to more than 100*l.*, the sum of 100*l.*, together with all the reasonable costs and charges of such proceedings and convictions, may be paid instead of the penalties for all the offences committed by him before the day on which the last summons was taken out against him (*b*).

66. *Application of penalties.*] And be it enacted, That all penalties for any offence against the Factory Act (*c*), which shall not have been otherwise appropriated at the time when this Act shall come into force, and every penalty imposed under this Act shall be applied under the direction of one of Her Majesty's Principal Secretaries of State, and shall be paid, on account of the inspector for the district in which the penalty was imposed, to such banker as shall be appointed by such inspector to receive the same. And every person to whom any such penalty shall be paid shall pay over the amount thereof to the banker so appointed within 14 days of receiving the same. And it shall be lawful for the Secretary of State (*d*) to remit the whole or any part of such penalty. And so much thereof as shall not be so remitted, and not otherwise especially appropriated by this Act (*e*), shall be applied by such inspector, under the direction of one of Her Majesty's Principal Secretaries of State, in such manner as shall appear best for the establishment or support of day schools for the education of children employed in factories. And so much of the 5 & 6 W. 4, c. 76, intituled *An Act to provide for the Regulation of Corporations in England and Wales*, as provides that certain penalties and forfeitures, if recovered before any justice of any borough having a separate court of quarter sessions of the peace, shall be recovered for and adjudged to be paid to the treasurer of such borough, shall be repealed as to the penalties imposed under this Act (*f*).

67. *How former conviction may be proved.*] And be it enacted, That whenever any person shall be convicted of any offence against the Factory Act (*g*) as amended by this Act, the clerk of the peace where such conviction shall have been filed

(*a*) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(*b*) As to the repetition of offences, see sect. 44, *ante*, p. 68.

(*c*) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(*d*) The 3 & 4 W. 4, c. 103, s. 31, *ante*, p. 22, enabled the inspector or justice to mitigate or discharge the penalty. This power is now confided to the Secretary of State for the Home Department; apparently the penalty must be

paid in the first instance before it can be remitted.

(*e*) The only special appropriation appears to be in sect. 60, *ante*, p. 76. The application of the penalties herein provided will prevent informations by mere common informers.

(*f*) See 5 & 6 W. 4, c. 76, s. 126.

(*g*) 3 & 4 W. 4, c. 103, *ante*, p. 9.

shall, upon the request in writing of any inspector or sub-inspector, deliver or cause to be delivered to him a copy of the conviction, certified under his hand to be a true copy. And every such copy shall be received as evidence of such conviction upon any future proceeding under this Act. And for every such copy (a) the clerk shall be entitled to have a fee of 1s., and no more.

68. *Convictions to be filed amongst the records of the county.*] And be it enacted, That every conviction under this Act may be in the form given in the schedule (D.) (b) to this Act annexed, or in any other form more suitable to the case, and shall be certified in *England* and *Ireland* to the next general or quarter session of the peace, and in *Scotland* to the clerk of the justices of the peace, there to be filed amongst the records of the county, riding, division, stewardry, town, or place (c).

69. *No appeal from convictions, except in certain cases.*] And be it enacted, That no appeal shall be allowed against any conviction under this Act, except for an offence punishable at discretion by fine or imprisonment (d), or when the penalty awarded shall be more than 3l. (e). Neither shall any conviction (except as aforesaid) be removable by *certiorari* (f) or bill of advocation into any court whatever. And no

(a) The copy is not, however, evidence of itself. There must be proof of the party signing being clerk of the peace, and of his handwriting. This does not exclude other evidence of the conviction, and therefore, in the case of repetition of offences before the conviction has been filed, the conviction itself may be produced and given in evidence.

(b) Forms of convictions may be obtained of Messrs. Shaw, the publishers of this volume.

(c) The 11 & 12 Vict. c. 43, s. 35, excepts proceedings under the Factory Acts from the operation of that statute.

(d) See s. 63, *ante*, p. 76.

(e) See ss. 58—62, and s. 64, *ante*, pp. 73, 75.

(f) The power of removing convictions by *certiorari* is taken away by this clause, and it has been held by the court of Queen's Bench, that a conviction under the Factory Acts cannot be removed on the suggestion that the party was convicted on a summons of justices under s. 47, giving unreasonably short notice, and in the absence of himself or any one appearing on his behalf, except an attorney authorized only to apply for an adjournment, and that the conviction took place without proof of the service of the summons, and without any evidence of the facts charged, as

such objections do not go to the *jurisdiction*. *Ex parte Hopwood*, 15 Q. B. 121; 8 C. 19 L. J. 197, M. C.; 8 C. 14 Jur. 812. Even had the attorney no authority at all, the justices would have jurisdiction.

Lord Campbell, C. J., in giving judgment, said, This rule ought not to be granted. If the justices had misconducted themselves and *mala fides* existed they would be liable to a criminal information. The question now is, whether we can review the manner in which the justices conducted this trial, our common law jurisdiction being taken away by the legislature, and unless it is clearly shown that the justices proceeded without jurisdiction we are not entitled to interfere. As to the first question, it seems to me to be left to the discretion of the justices to decide whether or not *reasonable notice* has been given, and we cannot lay it down as a rule that the notice given in this case was necessarily a bad notice. Then as to the second objection, it appears to me that no want of jurisdiction has been shown. Without relying at all upon the circumstance of the attorney having been present, I think the justices had jurisdiction over the matter, and we cannot review the manner in which they have exercised that jurisdiction. Whether they were

information, conviction, or other proceeding on any complaint for an offence against this Act shall be quashed or deemed illegal for matter of form, or for the want of any averment unnecessary to be proved, or the omission of any word, or for the insertion of any word, in any case in which such omission or such insertion respectively do not affect the essence of the offence, nor for the wrong designation of a name, or time or place, where the person, time, and place intended shall have been so stated as to have been, in the opinion of the justices by whom the complaint shall have been heard, clearly understood by the person charged with such offence. And it shall not be necessary, in any information, conviction, or other proceeding under this Act, to define the processes carried on in such factory, or nature of the power by which the machinery of such factory is moved, or to set out that the factory or process of employment referred to is not within any of the cases excepted (a), provided that it be therein stated that such factory is a factory within this Act. And the proof of being within any such excepted case shall lie upon the party claiming the benefit of such exception.

70. *Appeal.*] And be it enacted, That any person aggrieved by any such conviction for which an appeal is allowed by this Act, may appeal to the next court of general or quarter sessions which shall be holden not less than 12 days after the day of the conviction for the county or other jurisdiction wherein the cause of complaint shall have arisen.

Provided that the person so intending to appeal shall give to the inspector or sub-inspector of the district, notice in writing of such appeal, and of the cause or matter thereof, within 3 days

right or wrong in that respect we cannot now interfere. The cases cited in the argument do not appear to me to apply here.

Patteson, J.—The 69th section of the Factory Act is very express, and this case does not fall within the exception therein stated; therefore, *prima facie*, the *certiorari* is taken away, and the only question is whether or not, upon the facts, it appears that the justices had jurisdiction. It is said that there was not a sufficient interval of time between the service of the summons and the appearance, but the statute does not limit the time at all. The 47th section merely says that the party summoned shall be bound to appear at the time and place mentioned in the summons, and such time and place is a matter of discretion according to the circumstances of each case, and we cannot lay down any precise rule. The next objection is, that the parties could not be considered

as having appeared before the justices, and that no proof was required of the service of the summons to appear. Now when an attorney appeared on behalf of the parties charged, it was very like an admission that they had been served with the summons. It is manifest that some one had been served. But at all events, I do not see that the jurisdiction of the justices was therefore taken away. As to the other point, of the justices having proceeded and convicted without any evidence, it is quite clear that does not affect the question of their jurisdiction, the fact of the justices being wrong in their proceedings, when once they possessed jurisdiction, cannot be said to be enough to prevent the operation of the section taking away the *certiorari*. — *Wightman, J.* and *Erie, J.* concurred. — *Rule refused.*

(a) See the exceptions, s. 73, *ante*, pp. 81, 82.

after the conviction or order (a), and 7 clear days at the least (b) before such session, and shall also enter into a recognizance, with 2 sufficient sureties, before a justice of the peace for the county or other jurisdiction, 7 clear days at the least (b) before such session, conditioned personally to appear at the said session, and to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as shall be by the court awarded. And the court at such session shall hear and determine the matter of appeal, and shall make such order thereon as to the court shall seem meet. And in case of the dismissal of the appeal or the affirmance of the conviction or order the court shall adjudge and order the party to be punished according to the conviction or to obey the order appealed against, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

71. *Who are to exercise the powers of justices.*] And be it enacted, That in all cases in which a justice of the peace is required or empowered to do any thing under the Factory Act (c) as amended by this Act, or is named therein, a burgh magistrate shall have within his jurisdiction the same powers and duties as are herein given to such justice, and shall exercise the same in Scotland (d). But no complaint preferred for any offence against this Act committed in a factory, shall be heard by a justice of the peace or burgh magistrate, being an occupier of the factory (e), or being the father, son, or brother of the occupier of the factory in which the offence set forth in the complaint shall have been committed.

72. *Exemptions of silk factories.*] Provided always, and be it enacted (f), That any child above 11 years of age, employed

(a) The enactment herein, which refers to the order, seems to be inserted inadvertently, as it does not appear what order is meant. There will be some difficulty in respect of appeals against convictions, where the inspector or sub-inspector is not the informant.

(b) Both days exclusive, see *R. v. Shropshire, (J.)*, 8 A. & E. 173. *Liffin v. Pitcher*, 1 Dowl. N. S. 767.

(c) 3 & 4 W. 4, c. 103, *ante*, p. 9, and see n. (1), *ante*, p. 75.

(d) See 3 & 4 W. 4, c. 103, s. 46, *ante*, p. 37.

(e) It was doubtless intended that no justice of the peace should act, in the hearing of any complaint, who was an occupier of any factory, according to the regulation in sect. 10, with reference to the surgical certificates. Indeed, the occupier of the particular factory would generally be himself the defen-

dant, and consequently could not act as the judge. The language which is used, probably through an accident, is however too plain to admit of this construction, and there is no objection to a justice who is an occupier of a factory, or related to one, adjudicating upon any question under this Act. In the 1 & 2 W. 4, c. 39, s. 10, any person who might be the proprietor or occupier of a cotton mill or factory, was restrained from acting as a justice of the peace under that Act. The inconvenience of this clause is confessed by the fact, that in many cases informations against mill occupiers have failed, because the adjudicating justices were mill occupiers. See Inspector Horner's Report, from April, 1855, p. 4.

(f) This clause is recited and repealed by 13 & 14 Vict. c. 54, s. 7, *post*, p. 105, and in lieu thereof the last-mentioned

solely in the winding and throwing of raw silk, and who shall have obtained the surgical certificate required by this Act (*a*), of his having completed his 11th year, may work (without any proof of having attended a school), for any time not exceeding 10 hours, on any working day (*b*), but not after $\frac{1}{2}$ past 4 o'clock, p.m., of any Saturday (*c*).

73. *Interpretation clause.*] And be it enacted, That the Factory Act (*d*), as amended by this Act, and this Act, shall be construed together as one Act (*e*), and that so much of the Factory Act, and of any rule or regulation heretofore made by any inspector, as is inconsistent with this Act, shall be taken to be repealed. And that in this Act, unless another sense shall be plainly shown by the context, or by some positive enactment to the contrary (*f*),

The word "child" shall be taken to mean a child under the age of 13 years.

And the words "young person" shall be taken to mean a person of the age of 13 years and under the age of 18 years.

And the word "parent" shall be taken to mean parent, guardian, or person having the legal custody of any such child or young person.

And any person who shall work in any factory, whether for wages or not, or as a learner (*g*) or otherwise, either in any manufacturing process, or in any labour incident to any manufacturing process, or in cleaning any part of the factory, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever (save in the cases herein-after excepted), shall be deemed, notwithstanding any

section enacts, that any *child* employed solely in winding and throwing raw silk, who shall have obtained the surgical certificate required by this Act, of having completed his 11th year, may be employed in all respects as *young persons* may be under 13 & 14 Vict. c. 54, *post*, p. 101.

(*a*) The 3 & 4 W. 4, c. 103, s. 11, *ante*, p. 37, requires this surgical certificate, though the form is altered by this Act. See note on sect. 30, *ante*, p. 57. By 3 & 4 W. 4, c. 103, s. 8, in mills for the manufacture of silk, children under 13 are allowed to work 10 hours a day. Here children above 11 may work for that time. It must also be noticed that the exception in *this* section is confined to the particular cases mentioned of employment in the two Acts of winding and throwing silk. The clause in the text is repealed by 13 & 14 Vict. c. 54, s. 7, *post*, p. 105.

(*b*) This clause modifies 4 & 5 W. 4, c. 1, s. 2, *ante*, p. 31.

(*c*) The period for the cessation of labour on Saturday is 2 o'clock, see 13 & 14 Vict. c. 54, s. 1, *post*, p. 102, and 16 & 17 Vict. c. 104, s. 1, *post*, p. 107.

(*d*) See 3 & 4 W. 4, c. 103, *ante*, p. 9.

(*e*) The effect of these words is to incorporate all the provisions of the *Factory Act* with the present statute, except what are hereby repealed. See *Carter v. Filliter*, 6 Jus. Peace, p. 745, and *R. v. Tithe Commissioners*, 8 Jus. Peace, 473.

(*f*) See stat. 3 & 4 W. 4, c. 103, s. 49, *ante*, p. 28, as to the construction of the *masculine* gender and singular gender.

(*g*) This will doubtless include *apprentices*. But it will be well to refer to the 42 G. 3, c. 73, *ante*, p. 1.

other description, limitation, or exception of employment in the Factory Act (a), to be "employed" therein within the meaning of this Act (b).

And the words "inspector" and "sub-inspector" shall be taken to mean respectively an inspector and a sub-inspector of factories.

And the word "agent" shall be taken to mean any person having on behalf of the occupier of any factory the care or direction thereof or of any part thereof, or of any person employed therein.

And the word "month" shall be taken to mean a calendar month.

And the words "mill-gearing" shall be taken to comprehend every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley by which the motion of the first moving power is communicated to any machine appertaining to the manufacturing processes.

And the word "factory," (notwithstanding any provision or exemption in the Factory Act) (c), shall be taken to mean all buildings and premises situated within any part of the United Kingdom of *Great Britain and Ireland* wherein or within the close or curtilage of which steam, water, or any other mechanical power shall be used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair (d), silk, flax, hemp (e), jute, or tow, either separately or mixed together, or mixed with any other material, or any fabric made thereof.

And any room situated within the outward gate or boundary of any factory wherein children or young persons are employed in any process incident to the manufacture carried on in the factory shall be taken to be a part of the factory, although it may not contain any machinery.

And any part of such factory may be taken to be a factory within the meaning of this Act.

But this enactment shall not extend to any part of such factory used solely for the purposes of a dwelling house, nor to any part used solely for the manufacture of goods made entirely of any other material than those herein enumerated, nor to any factory or part of a factory used

(a) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(b) And as the former Act and this Act are to be construed as one Act, this meaning must be given to the word *employed*, in the 3 & 4 W. 4, c. 103, *ante*, p. 9.

(c) 3 & 4 W. 4, c. 103, *ante*, p. 9.

(d) Hair and jute were not included in the former statutes.

(e) By stat. 9 & 10 Vict. c. 40, *post*, p. 97, certain ropeworks are exempted from the operation of this Act, and the 3 & 4 W. 4, c. 103, *ante*, p. 9.

solely for the manufacture of lace, of hats, or of paper, or solely for bleaching (*a*), dyeing, printing (*b*), or calendering.

And the enactments of this Act respecting the hours of labour shall not apply to any young person when employed solely in packing goods in any warehouse or part of a factory not used for any manufacturing process, or for any labour incident to any manufacturing process (*c*).

And nothing in this Act contained shall extend to any young person, being a mechanic, artisan, or labourer, working only in making and repairing the machinery or any part of the factory (*d*).

(*a*) Bleaching factories are now under the consideration of parliament. An Act for their government, though withdrawn for the present session of parliament, will doubtless become law during the session of 1856.

(*b*) As to print works, see 8 & 9 Vict.

c. 29, and 10 & 11 Vict. c. 70, by which they are specially regulated.

(*c*) See the exemption in 3 & 4 W. 4, s. 103, s. 1, *ante*, p. 9, which is narrowed by the latter part of this sentence.

(*d*) See stat. 3 & 4 W. 4, c. 103, s. 47, *ante*, p. 47, and the note (*e*) thereon.

SCHEDULES to which this Act refers (a).

SCHEDULE (A.)

CERTIFICATES.

[To be written or printed on white paper (b).]

Factories Regulation Act, Victoria, c.

No.—. Certificate of age for a child to be employed in the factory of ——— (c), situated at ———, in ———.

I, ———, of ———, duly appointed a certifying surgeon, do hereby certify, that ———, son [or daughter] of ——— (d) and ———, residing in ———, has been personally examined by me, this ——— day of ———, one thousand eight hundred and ———, and that the said child has the ordinary strength and appearance of a child of at least eight years of age, and that I believe the real age of the said child to be at least eight years; and that the said child is not incapacitated, by disease or bodily infirmity, from working daily in the above-named factory for the time allowed by this Act.

(Signed) ———, Certifying Surgeon.

The form of surgical certificate to be given to a child who has obtained a certificate of real age shall be the same as above, omitting the words, "*and that the said child has the ordinary strength and appearance of a child of at least eight years of age, and that I believe the real age of the said child to be at least eight years,*" and substituting

(a) All the forms in these schedules may be obtained of Messrs. Shaw, Fetter Lane, London, the publishers of this volume.

(b) See sec. 9, *ante*, p. 37. The latter part of these certificates contains the important addition to the form required by stat. 3 & 4 W. 4, c. 103, s. 13, *ante*, p. 14.

(c) Perhaps the proper word to be filled in here is the name of the occupier

of the factory, but as the occupier may have more than one factory in the place, it will be advisable for the surgeon to add the name of the factory.

(d) The names of both parents must be set out. In the case of an illegitimate child the surgeon will give the names of the reputed parents, and where the parents' names are unknown it will be well to state that fact, and give the residence of the child.

these words in their place: "*and that a certificate of the birth [or baptism] of the said child has been produced to me in the form required by this Act, proving that the real age of such child is at least eight years.*"

The form of surgical certificate to be given to children employed in silk mills (e) in proof that a child is eleven years of age shall be the same as the above, substituting the word "eleven" for the word "eight" (f).

[To be written or printed on coloured paper.]

Factories Regulation Act, Victoria, c.

No. —. Certificate of age for a young person to be employed in the — factory, of (g) —, situated at —, in —.

I, —, of —, duly appointed a certifying surgeon, do hereby certify, that —, son [or daughter] of — and —, residing in —, has been personally examined by me this — day of —, one thousand eight hundred and —, and that the said young person has the ordinary strength and appearance of a young person of at least thirteen years of age, and that I believe the real age of the said young person to be at least thirteen years; and that the said young person is not incapacitated, by disease or bodily infirmity, from working daily in the above-named factory for the time allowed by this Act,

(Signed)

—, Certifying Surgeon.

The form of surgical certificate to be given to a *young person* who has obtained a certificate of real age (h) shall be the same as above, omitting the words, "*and that the said young person has the ordinary strength and appearance of a young person of at least thirteen years of age, and that I believe the real age of the said young person to be at least thirteen years,*" and substituting these words in their place, "*and that a certificate of the birth [or baptism] of the said young person has been produced to me in the form required by this Act, proving that the real age of such young person is at least thirteen years.*"

The form of surgical certificate to be given in *either case* (i) by any practitioner who is *not a certifying surgeon* must be the same as the corresponding form above given, omitting the words "*duly appointed*

(e) Under the provisions of 7 & 8 Vict. c. 15, s. 72, *ante*, p. 80.

(f) For the form of certificate to be given by a person not a certifying surgeon, see memorandum to following form.

For further directions as to filling up the above form, see the general

memorandum at the foot of the following form.

(g) See n. (c) to previous form.

(h) See 7 & 8 Vict. c. 15, s. 15, *ante*, p. 40.

(i) That is of a *child or young person*.

a certifying surgeon," and substituting the words "duly authorized by the university [or college, or other public body having authority in that behalf] of ———, to practise surgery [or medicine]" (k), and making the following addition which must be signed by a justice of the peace or burgh magistrate:—

The child [or young person] named in the above-written certificate has been this day brought before me; and the appearance of the said child [or young person] agrees with the description therein given; and I believe the real age of the said child [or young person] to be at least [here insert the word "eight" or "eleven" (l) in the case of a child, or "thirteen" in the case of a young person,] years; and I declare that I have no beneficial interest in (m), and am not the occupier of any factory, and that I am not the father, son, or brother of the occupier of any factory.

Dated this ——— day of ———, one thousand eight hundred and ———.

(Signed)

C. D., Justice,
[or Burgh Magistrate.]

In every surgical certificate of age the day of the month on which it shall be granted shall be written in words and not in figures.

So soon as any certificates authorized by this Act (n) to be received as proof of the age of any persons shall be obtained by the occupier of a factory or his agent (o), they shall be fixed in a book, to be called "*The Age Certificate Book*," in the order of the dates at which they shall have been respectively received; and such certificates shall be numbered in the order in which they are so fixed in the book; but the certificates for children shall be kept in a separate and distinct place in the said book, or in a separate book, and shall be marked with a series of running numbers distinct from that of the certificates for young persons.

So soon as any certificate of age authorized by this Act shall be obtained, the number hereinbefore required to be set against each certificate shall be set against the name of the child or young person for whom such certificate has been granted, in the first column of the register (p) of the persons employed, required by this Act to be kept in each factory. In any silk factory in which it shall be lawful to employ children above eleven years of age for ten hours a day (q) no certificate shall be required in proof that such children have attained the age of thirteen years, so long as such persons shall not work more than ten hours in any one day.

If a surgeon shall have refused to grant a certificate of age to any child or young person, the word "*refused*" shall be written in the

(k) See s. 10, ante, p. 37.

(l) That is in cases of silk mills.

(m) This negating of interest does not occur in sec. 10, which requires the counter-signature of the certificate there referred to.

(n) See sec. 53, ante, p. 71.

(o) In sec. 10, ante, p. 41, the occu-

pler only is named, and the introduction of the agent above appears to be surplusage.

(p) As to this, see sched. B. post, pp. 87, 88.

(q) See sec. 72, ante, p. 70, and note (y) in sec. 30, ante, p. 57.

column of the register where the numbers of the certificates are required to be inserted.

Factories Regulation Act, Victoria, c.

CERTIFICATE REFUSED (a).

I, ——— of ———, duly appointed a certifying surgeon, do hereby declare, that ———, son [or daughter] of ———, residing in ———, has been personally examined by me this ——— day of ——— one thousand eight hundred and ———, and that in my opinion the said [child or young person] has not the ordinary strength and appearance [of a child of at least eight years of age (or of a young person of at least thirteen years of age), or (or and) is incapacitated by disease and bodily infirmity from working daily in a factory for the time allowed by this Act.]

(Signed) ———, Certifying Surgeon.

N.B.—The words within brackets shall be in the handwriting of the certifying surgeon, who shall insert the reason of his refusal, to be either on account of deficient age or of bodily infirmity, or both, as the case may be.

Factories Regulation Act, Victoria, c.

SCHOOL CERTIFICATE (b).

I hereby certify, that the under-mentioned child [or children], employed in the factory of ——— (c), situate in ———, has [or have] attended the school kept by me at ——— for the number of hours and at the time on each day specified in the columns opposite to his [her or their] name [or names] during the week ending on Saturday the ——— day of ———, one thousand eight hundred and ———, and that the causes of absence stated are true, to the best of my belief.

Name of Child.	Monday.		Tuesday.		Wednesday		Thursday.		Friday.		Causes of Absence.
	Time.		Time.		Time.		Time.		Time.		
	From	To	From	To	From	To	From	To	From	To	

(Signed) ———, Schoolmaster [or Schoolmistress].
the ——— day of ———, 18—.

(a) See as to this, sec. 11, *ante*, p. 38.

(c) See n. (c), p. 83.

(b) See sec. 39, *ante*, p. 63.

Under the column headed "Time" the periods of the day that each child attends school shall be stated, as thus, from nine to twelve, or from two to five, or any other time, as the case may be; and all the children employed in the same factory, who attend school before one of the clock in the afternoon, shall be entered together, distinct from those who attend school after one of the clock.

The time when each child attends school shall be stated in the column for each day, in the handwriting of the schoolmaster; and no certificate shall be valid unless the schoolmaster shall, in his own handwriting, subscribe to it his christian and surname in full.

In the case of any child who has been absent from school, the letter {A.} shall be inserted under the day or days of absence, and the cause of absence shall be inserted in the column headed "causes of absence," so far as the same can be ascertained; and when any day has been a holiday at the school, the word "holiday" shall be entered in the column of the day.

All school certificates, if given on loose sheets, shall, as soon as received (d), be fixed in a book to be called "The School Certificate Book," in the order of their respective dates. Copies of the above forms may be bound together in a book for each factory.

SCHEDULE (B.) (e).

REGISTERS.

FORM FOR THE REGISTER OF YOUNG PERSONS (f).

List of young Persons employed in this Factory.

No. of Reference to Age Certificate Book, as required in Sched. (A.) (g)	Names.		Date of First Day of being employed or re-employed.			When any Person ceases to be employed, insert opposite the Name the word "Left;" and when any person completes his Eighteenth Year of Age, the Word "Eighteen."
	Surname.	Christian Name.	Month.	Day.	Year.	

This register shall contain the names of every young person employed in the factory, to be entered successively when engaged to

(d) That is by the occupier of the factory, and each certificate must be kept for 6 months from its date. See sec. 39, *ante*, p. 63.

(e) The forms in this schedule may be obtained of Messrs. Shaw of Fetter Lane, London, the publishers of this volume.

(f) See sec. 9, *ante*, p. 37, and sec. 27, *ante*, p. 53, which requires this register to be kept.

(g) See as to the entry of certificates refused in this column of the register, *ante*, pp. 85, 86.

work, whether for the first time, or, after having left, when re-engaged to work.

At the beginning of this register shall be inserted—

1. The name of the occupier or firm.
2. The name of the factory, the place, township, parish, and county where it is situated, and the post office to which the occupier desires his letters to be directed.
3. The nature of the work carried on.
4. The nature of the moving power, the whole amount of horse power of the steam engine or water-wheel, and also the amount of horse power employed by the occupier or firm (*h*).
5. The clock by which the employment of the workers in the factory is regulated (*i*).

Every alteration in any of the above particulars shall be inserted immediately after the alteration shall have been made.

6. The holidays and half holidays which shall have been given in conformity with this Act shall be recorded together in a distinct place in this register (*k*).

7. The dates when the whole of the factory, if done at one time, and the several parts if done at different times, shall have been limewashed or painted in oil (*l*), and when painted in oil, the dates of their having been washed as required by this Act; and the names and residences of the persons by whom the factory was limewashed or painted in oil, shall be recorded in a distinct place in this register within six days after they have been so limewashed, painted, or washed; and this declaration of the times of limewashing, painting, and washing shall be signed by the mill occupier or his principal agent.

8. The visits of the certifying surgeon to the factory shall (*m*) be recorded in this register in the manner following :—

Date of Visit.	Number of Persons presented for Examination.	Number of Certificates granted.	Signature of Surgeon.
	•	†	

* If the surgeon shall be told that there is no child or young person in the factory to be examined at the time of his visit, he shall insert in this column the word "none."

† If none be granted, he shall insert the word "none."

(*h*) The first four requisites correspond with those in the notice required to be given by s. 7, *ante*, p. 86.

(*i*) See s. 26, *ante*, pp. 52, 53.

(*k*) See s. 37, *ante*, p. 62.

(*l*) See s. 18, *ante*, p. 40, which requires the factory to be *limewashed*, and the parts painted to be *washed*, but is silent on the subject of *painting*.

(*m*) See s. 16, *ante*, p. 42.

FORM FOR THE REGISTER OF CHILDREN (n).

To be kept in those factories only where children under 13 years of age are employed.

Names of the Children employed in this Factory before 12 o'clock at Noon, or the Morning Set (o).

No. of Reference to Age Certificate Book, as required in Schedule (A.)	Names.		Date of First Day of Employment or Re-employment.			When any Child ceases to be employed, insert opposite its Name the Word "Left;" or if transferred to the Afternoon Set, the Word "Changed;" or the Words "Young Person," when a child completes its thirteenth year.
	Surname.	Christian Name.	Month.	Day.	Year.	

Names of the Children employed in this Factory after One o'clock in the Afternoon, or the Afternoon Set.

No. of Reference to Age Certificate Book, as required in Schedule (A.)	Names.		Date of First Day of Employment or Re-employment.			When any Child ceases to be employed, insert opposite its Name the Word "Left;" or if transferred to the Morning Set, the Word "Changed;" or the Words "Young Person," when a child completes its thirteenth year.
	Surname.	Christian Name.	Month.	Day.	Year.	

This register shall contain the names of every child under thirteen years of age employed in the factory, to be entered successively when engaged to work, whether for the first time, or after having left, when re-engaged to work (p).

(n) The 7 & 8 Vict. c. 15, s. 72, *ante*, p. 79, is repealed by 13 & 14 Vict. c. 64, s. 7, *post*, p. 105, whereby children having completed 11 years, employed solely in winding and throwing silk, may be employed as young persons

under the last-mentioned Act. This form would seem to be still applicable for children under 11 years.

(o) See as to the two sets, s. 30, *ante*, p. 87.

(p) See note (f), *ante*, p. 87.

If any child be removed from the morning set to the afternoon set, or *vice versa*, the name of such child must be entered as a new comer in the register for the set to which it is removed, and the number of its certificate of age must be placed against its name, but no new certificate shall be required for such child.

If the mill occupier desires to change the time of working of the two entire sets of children at stated periods, (as for instance) to make a change every month, so that the children who worked in the morning one month shall work in the afternoon the next month, and *vice versa* for the other children, alternately throughout the year, it will not be necessary to enter the names of the children anew, but the mill occupier or his agent shall only be required to make and sign the following *declaration (g)*, in addition to the other details hereinbefore required :—

1. The children entered in this register as belonging to the *morning set* work in this factory before twelve o'clock, and not after one o'clock, on and after the first Monday of the months of—

January, March, May, July, September, and November ;
and after one o'clock, and not before twelve o'clock, on and after the first Monday of the months of—

February, April, June, August, October, and December.

2. The children entered in this register as belonging to the *afternoon set* work in this factory after one o'clock, and not before twelve o'clock, on and after the first Monday of the months of—

January, March, May, July, September, and November ;
and before twelve o'clock, and not after one o'clock, on and after the first Monday of the months of—

February, April, June, August, October, and December.

Signature of _____

Occupier or Agent.

When a change in the time of working of the two entire sets of children is made at *other* stated periods *allowed by this Act*, the necessary alterations shall be made in the above declaration, to the satisfaction of the inspector or sub-inspector of the district.

In any silk factory in which children above *eleven* years of age are employed more than *seven* hours in any one day (*r*), a register of the names of such children shall be kept in the above form, distinct from the register of the names of the children who are employed in *morning* and *afternoon sets (s)*.

In all mills where more than *twenty* children or young persons are employed, an *alphabetical index* shall be kept, according to the first letter of the surname, of the names of all the children and young persons employed in the factory, adding to each name the number of

(g) Which is to be inserted in this register.

(r) See sec. 30, *ante*, p. 57.

(s) See note (a), *ante*, p. 57.

the last certificate under which the age of the child or young person is *employed*, or if more than sixteen years or age, the letters XVI.

All the forms contained in this Schedule (B.) which shall apply to any particular factory may be bound together in one book, *except* the *alphabetical index* of reference hereinbefore referred to.

SCHEDULE (C.) (a).

NOTICES TO BE FIXED UP IN THE FACTORY.

Form for the notice to be fixed up of the names and addresses of the inspector and sub-inspector, the certifying surgeon, the clock for regulating the factory, and the hours of work of all young persons and females employed in the factory (b).

Name and address of the inspector of the district - - -	}	_____
Name and address of the sub-in- specter of the district - -	}	_____
Name and address of the surgeon who grants certificates of age for the factory - - -	}	_____
Clock by which the hours of work are regulated - - -	}	_____

The hours of work of all young persons and females above eighteen years of age employed in this factory (c).

Days of Week.	Morning.		Forenoon.		Afternoon.		Evening.		Total Hours.
	From	To	From	To	From	To	From	To	
(d)									

* In this space the days of the week to which the hours of work refer shall be entered.

_____ { Signature of the
Occupier of the Factory
or his Agent.

(a) See sect. 28, *ante*, p. 56. The forms contained in this schedule may be obtained of Messrs. Shaw, the publishers of this volume.

(b) Sec. 28, *ante*, p. 56, requires the notice to specify the times of work of all persons in the factory; practically the form of the schedule will be to the same effect. See 13 & 14 Vict. c. 54, s. 1, *post*, p. 102.

(c) This notice, so far as it relates to the working hours of young persons and females above 18, is repealed by 13 & 14 Vict. c. 54, s. 2, *post*, p. 102.

(d) The time specified in this notice is that which is to be the beginning of the work in the factory. See sect. 52, *ante*, p. 71, and see 13 & 14 Vict. c. 54, s. 1, *post*, p. 102.

In every silk factory (*d*) in which children above *eleven* years of age are employed more than *seven* hours in any one day, a separate notice, in the above form, shall be fixed up of the hours such children are employed.

Form for the Notice to be fixed up of the Times allowed for Meals (*e*).

The Times allowed for Meals in this Factory.						
Days of the Week.	Breakfast.		Dinner.		Tea.	
	From	To	From	To	From	To
*						

* In this space the days to which the meal hours refer shall be entered.

_____ { Signature of the Occupier of
the Factory or his Agent.

These notices of the regular hours of work fixed up in a factory are not required to be altered when young persons are only employed at other hours for the recovery of lost time as authorized by this Act (*f*), provided the notice required to be fixed up when recovering lost time be fixed up, and provided on such notice it is stated at what time of the day it is intended to recover the time so lost (*g*).

(*d*) See sec. 30, *ante*, p. 57.

(*e*) See sec. 28, *ante*, p. 53.

(*f*) See 13 & 14 Vict. c. 54, s. 2, *post*, p. 103.

(*g*) See the form, *post*, p. 98.

Form of the notice to be fixed up (h) when the occupier of the factory intends to recover all or any part of the time which has been lost by the stoppage of the machinery in the factory, as allowed by this Act.

Account of Time lost and recovered.							
TIME LOST.				TIME RECOVERED.			
Date.	Cause of loss.	Time of Day when lost.		Amount lost.	Explanatory Remarks.	Date.	Time of Day when recovered.
		Hours	Minutes.				

 { Signature of the Occupier of the Factory or his Agent.

No lost time is required to be entered except such as it may be intended to recover.

The entries of all the details in this notice relating to any time lost or recovered shall be made in conformity with the provisions in the Act.

Form of the notice to be fixed up when time has been lost by partial stoppage of the machinery by drought or floods, and is intended to be recovered during the following night (i).

Notice of Time lost and recovered (k).						
TIME LOST.				TIME RECOVERED.		
Description of the Room where the Stoppage took place, and of the Machinery stopped.	Time of the Day when the Stoppage took place.	Amount of Time lost.		Signature of the Person taking Time.	Time of the Night when the Young Persons are employed.	Amount of Time recovered.
		Hours	Minutes.			Hours Minutes.

(k) See sec. 28, *ante*, p. 56, and s. 33, *ante*, p. 59. *young persons or females* above 18, see 13 & 14 Vict. c. 54, ss. 4, 5, *post*, p. 103.

(i) See ss. 33, 34, *ante*, p. 59.

(k) As to the recovery of lost time by *As to children*, see 16 & 17 Vict. c. 104, s. 3, *post*, p. 108.

Names of the females and young persons who have lost time by the stoppage of the machinery at the dates affixed (l).

Date when Time was lost.	Surname.	Christian Name.	Date when Time was lost.	Surname.	Christian Name.

The entries of time lost, and of the names of the females and young persons who have lost time, shall be made in these notices before any part of the time can be recovered (m).

All notices of time lost and recovered, except when they are kept hung up in the factory (n), as required by this Act, shall be preserved in a book in the order of their respective dates, and be open for the examination of any inspector or sub-inspector (o), and all such notices shall be kept for six calendar months after the lost time entered therein shall have been recovered.

SCHEDULE (D) (a).

FORMS OF NOTICES, SUMMONSES, AND CONVICTION.

Form of notice to be given to the occupier of a factory, by an inspector or sub-inspector, of such part of the machinery, or such driving-strap or band, in the factory, as appears to him to be dangerous to the workers (b).

To [name of occupier], occupier of a [description of the manufacture] factory, situated in —, in the parish of —, and county of —.

I hereby give you notice, that the following parts of the machinery in your factory, namely [here enumerate the parts], appear to me to

(l) See note (k), *ante*, p. 93.

(m) See ss. 33, 34, *ante*, p. 50, and see note (k), *ante*, p. 93.

(n) See sec. 28, *ante*, p. 56.

(o) See sec. 3, *ante*, p. 34.

(a) The forms in this schedule may be obtained of Messrs. Shaw, Fetter Lane, London, the publishers of this volume.

(b) See sect. 43, *ante*, p. 7.

be dangerous, and likely to cause bodily injury to the workers employed in the factory; and I am of opinion that they ought severally to be immediately well and securely fenced. And I hereby further give you notice, that by the Act made in the ——— year of Her Majesty's reign, intituled [*here set forth the title of this Act*], it is provided, that if after receiving this notice, you shall neglect or fail to fence the above-enumerated machinery, and if any persons shall suffer any bodily injury in consequence of such neglect or failure, you will be liable to a penalty of one hundred pounds, over and above all damages, costs, and charges to which you may be found liable in any action brought against you by or on behalf of the person so injured (c).

Given under my hand, this ——— day of ———, in the year one thousand eight hundred and ———.

(Signed) ———, Inspector [or Sub-Inspector].

Form of Summons to be issued by an Inspector or Sub-Inspector against a person who has committed an offence (d).

County of ———, } To the constable of ———.
[or Borough of, &c.] } Whereas it appeareth to me, I. F., one of Her Majesty's inspectors [or sub-inspector] of factories, that A. D. of ———, in the county [or borough, &c.] of ———, hath offended against the Act made in the ——— year of Her Majesty's reign, intituled [*here set forth the title of this Act*], inasmuch as he the said A. D., on the ——— day of ———, in the year of our Lord ———, at ———, in the county [or borough, &c.] of ———, did [*here set forth the substance of the charge*]; these therefore are to require you forthwith to summon the said A. D. to appear before such two or more of Her Majesty's justices of the peace acting in and for the county [or borough, &c.] of ———, who shall be present at ———, in the county [or borough, &c.] of ———, on the ——— day of ———, at the hour of ——— in the ——— noon of the same day, to answer to the said charge, and to be further dealt with according to law. And be you then there to certify what you have done in the premises. Herein fail not.

Given under my hand, this ——— day of ———, in the year of our Lord ———.

(Signed) I. F., Inspector [or Sub-Inspector].

Form of Summons of a Witness to be issued by an Inspector or Sub-Inspector (d).

County of ———, } To the constable of ———.
[or Borough of, &c.] } Whereas it appeareth to me, I. F., one of Her Majesty's inspectors [or sub-inspector] of factories, that A. D. of

(c) The words commencing *over, &c.* to the end of notice, are not contained in the section referred to.

(d) See sect. 50, *ante*, p. 70. By 11

& 12 Vict. c. 43, s. 35, proceedings under the Factory Acts are excepted from that statute.

—, in the county [or borough, &c.] of —, hath offended against the Act made in the — year of Her Majesty's reign, intituled [*here set forth the title of the (e) Act*], forasmuch as he the said A. D. on the — day of —, in the year of our Lord —, at —, in the county [or borough, &c.] of —, did [*here set forth the substance of the charge*], and that B. P. of —, in the county [or borough, &c.], is a material witness to be examined concerning the said charge; these therefore are to require you forthwith to summon the said B. P. to appear before such two or more of Her Majesty's justices of the peace acting in and for the county [or borough, &c.] of —, as shall be present at —, in the county [or borough, &c.] of —, on the — day of —, at the hour of —, in the — noon of the same day, to testify his knowledge concerning the premises. And be you then there to certify what you have done in the premises. Herein fail not.

Given under my hand, this — day of —, in the year of our Lord —.

(Signed) I. F., Inspector [or Sub-Inspector].

FORM OF CONVICTION (f).

County of —, }
 [Liberty or Borough, } Be it remembered, That on the —
 as the case may be.] } day of —, in the year one thousand
 eight hundred and —, A. B. [*describe the offender*] is convicted
 before us, J. P. and K. Q., two of Her Majesty's justices of the
 peace for the county [liberty or borough, as the case may be], of
 —, in pursuance of an Act passed in the — year of the
 reign of Queen Victoria, intituled [*here insert the title of this Act*],
 for that he [*describe the offence*].

Given under our hands and seals, the day and year above
 written.

J. P. (L.s.)

K. Q. (L.s.)

(e) The word 'the' should be 'this.'

(f) See sect. 68, ante, p. 77. By 11 & 12 Vict. c. 43, s. 35, proceedings un-

der the Factory Acts are excepted from that statute.

The Ropeworks Exemption Act, 1846.

9 & 10 VICT. c. 40.

An Act to declare certain Ropeworks not within the operation of the Factory Acts. [3rd August, 1846.]

WHEREAS by the 3 & 4 W. 4, c. 103, intituled *An Act to regulate the Labour of Children and young Persons in the Mills and Factories of the United Kingdom*, which was amended by the 7 & 8 Vict. c. 15, intituled *An Act to amend the Laws relating to Labour in Factories*; and which said Acts have been construed to apply to ropeworks; and it is expedient to relieve ropemakers from the effect of such construction, and of the said Acts: Be it declared and enacted,

Certain ropeworks not to be deemed mills or factories within the provisions of recited Acts.] That no ropery, ropewalk, or ropework in which machinery, moved by steam, water, or other mechanical power, is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, but only for laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and which has no internal communication with any buildings or premises forming or forming part of a mill or factory within the meaning of the said Acts (a), (except such as is necessary for the transmission of power,) shall be deemed to be a mill or factory within the provisions of the said Acts or of either of them, and that nothing in the said Acts, or in either of them, shall be deemed to apply to the employment of children, young persons, or women in any such ropery, ropewalk, or ropework.

(a) 3 & 4 W. 4, c. 103, *ante*, p. 9, and 7 & 8 Vict. c. 15, *ante*, p. 33.

The Factory Labour Limitation Act, 1847.

10 & 11 VICT. c. 29.

An Act to limit the Hours of Labour of young Persons and Females in Factories (a). [8th June, 1847.]

WHEREAS by the 3 & 4 W. 4, c. 103, intituled *An Act to regulate the Labour of Children and young Persons in the Mills and Factories of the United Kingdom*; and by the 7 & 8 Vict. c. 15, intituled *An Act to amend the Laws relating to Labour in Factories*; and by the said first-mentioned Act it was provided, that no person under the age of 18 years should be employed in any such mill or factory as in the said Act is mentioned, in any such description of work as therein-before specified, more than 12 hours in any one day, nor more than 69 hours in any one week, except as therein-after is provided (b). And by the said last-mentioned Act it was provided, that no female above the age of 18 years should be employed in any factory as defined by the said Act, save for the same time and in the same manner as young persons (by the said Act defined to be persons of the age of 13 years and under the age of 18 years) might be employed in factories (c).

(a) This Act, sometimes called the 10 Hours Act, must be construed as one Act with the 3 & 4 W. 4, c. 103, *ante*, p. 9, the 4 & 5 W. 4, c. 1, *ante*, p. 31, 7 & 8 Vict. c. 15, *ante*, p. 33, the 13 & 14 Vict. c. 54, s. 9, *post*, p. 106, and the 16 & 17 Vict. c. 104, s. 5, *post*, p. 109, by which two last Acts it is amended. See *H. v. Fell*, 1 B. & Ad. 380, as to the construction of several Acts directed to be construed as one Act. By the subsequent Acts, 13 & 14 Vict. c. 54, *post*, p. 101, and 16 & 17 Vict. c. 104, *post*, p. 107, the hours of labour are extended, and so this Act is to that extent repealed.

By the *Ropeworks Exemption Act*,

9 & 10 Vict. c. 40, *ante*, p. 97, certain ropeworks are exempted from the operation of this Act.

Print Works are governed by Acts of parliament having special and exclusive application to them (8 & 9 Vict. c. 29, and 10 & 11 Vict. c. 70).

It is intended to pass an Act of parliament for the regulation of *Bleaching Works*.

(b) See 3 & 4 W. 4, c. 103, ss. 1 & 2, *ante*, p. 9. The same recital as in the text will be found in 13 & 14 Vict. c. 54, s. 1, *post*, p. 101.

(c) See 7 & 8 Vict. c. 15, s. 32, *ante*, p. 59.

And whereas it is expedient to alter the said Acts for the purpose of further restricting the hours of labour of young persons and females in factories: Be it enacted,

1. *Limitation of the hours during which persons under 18 years to be employed in mills and factories.*] That (a), notwithstanding anything in the said Acts contained, from the 1st of July, 1847, no person under the age of 18 years shall be employed in any such mill or factory, in such description of work as in the said first-mentioned Act is specified, for more than 11 hours in any one day, nor for more than 63 hours in any one week, except as in the said Act is provided (b); And that from the said 1st of July, 1847, the said two Acts before mentioned shall in all respects be construed as if the provision in the provision in the said first-mentioned Act contained, as to persons under the age of 18 years working in mills and factories, had been confined to 11 hours instead of 12 hours in any one day, and to 63 hours in any one week instead of 69 hours.

2. *Limitation of the number of hours for which persons under 18 years of age are to be employed.*] And be it enacted (c), That from the 1st of May, 1848, no person under the age of 18 years shall be employed in any such mill or factory, in such description of work as in the first-mentioned Act is specified, for more than 10 hours in any one day nor more than 58 hours in any one week, except as in the said Act is provided (d), and that from the 1st of May, 1848, the said two Acts shall in all respects be construed as if the provision in the said first-mentioned Act contained, as to persons under the age of 18 years working in mills and factories, had been confined to 10 hours instead of 12 hours in any one day, and 58 hours in any one week instead of 69 hours (e).

3. *Act extended to females above eighteen.*] And be it en-

(a) This clause reduces the time from 12 to 11 hours, *per diem*, from the 1st of July, 1847. The following clause further reduces the time to 10 hours *per diem* after the 1st of May, 1848.

(b) See 3 & 4 W. 4, c. 103, s. 2, *ante*, p. 10.

(c) This clause, after the 1st of May, 1848, reduces the time mentioned in sect. 1, by one hour *per diem*. This clause is, however, modified by 13 & 14 Vict. c. 54, s. 1, *post*, p. 102. The meal times are extra the 10 hours; so that a person may have been employed from 6 to 8, two hours being allowed for meals. See *Ryder v. Mills*, 3 Ex. Rep. 853.

(d) See 3 & 4 W. 4, c. 103, s. 2, *ante*, p. 10. But see 13 & 14 Vict. c. 54, s. 1, *post*, p. 102.

(e) See *Ryder v. Mills*, 3 Ex. Rep. 853; S. C. 19 L. J. 82, M. C., and *ante*, p. 53, n. (o), in which case it was held to be no offence under any of the Factory Acts to employ a young person in a factory for 10 hours, and no more, in one day, such 10 hours ending at a period which is more than 10 hours from the time when another child or young person first began to work in the morning of such day in such factory. This decision was the cause of the passing of the following statute, 13 & 14 Vict. c. 54, *post*, p. 101.

It is to be observed that the reports of the Factory Inspectors usually report that the Factory Acts are chiefly violated by *working beyond the legal hours*.

acted, That the restrictions respectively by this Act imposed as regards the working of persons under the age of 18 years shall extend to females above the age of 18 years (a).

4. *Recited Acts and this Act to be construed as one Act.*
And be it enacted, That the said two herein-before mentioned Acts as amended by this Act, and this Act, shall be construed together as one Act (b).

(a) See 7 & 8 Vict. c. 15, s. 32, n. (p),
ante, p. 59. See *Byder v. Mills*, 3 Ex.
Rep. 653; S. C. 19 L. J. 82, M. C.

(b) See 3 & 4 W. 4, c. 108, *ante*, p. 9,

and 7 & 8 Vict. c. 15, *ante*, p. 33,
13 & 14 Vict. c. 44, s. 9, *post*, p. 101,
and 16 & 17 Vict. c. 104, s. 4, *post*, p. 107.

The Factory Labour Amendment Act, 1850.

13 & 14 VICT. c. 54.

An Act to amend the Acts relating to Labour in Factories (a).
[5th August, 1850.]

WHEREAS by an Act 3 & 4 W. 4, c. 103, intituled *An Act to regulate the Labour of Children and young Persons in the Mills and Factories of the United Kingdom*, it was enacted, That no person under the age of 18 years should be employed in any mill or factory as in the said Act mentioned, in any such description of work as therein specified, more than 12 hours in any one day, except as therein-after provided (b).

(a) This Act was passed in consequence of the decision in *Ryder v. Mills*, 3 Ex. Rep. 853; 8 C. 19 L. J. 82, M. C., and *ante*, p. 58, n. (o).

By this Act the 9 & 10 Vict. c. 29, s. 2, *post*, p. 99, commonly called the '*Ten Hours Act*,' is repealed, and the time for working extended. "The present Act was passed as a compromise, whereby the benefit of the '*Ten Hours Act*' was withdrawn for securing the advantage of one uniform period for the commencement and termination of the labour of those whose labour is restricted, namely, from 6 a.m. to 6 p.m., with not less than 1½ hours between those limits, to be given at the same periods of the day, for the rest and refreshment of all; that in consideration of these benefits, the present law extended the factory working-day from the previous limit of 10 hours to the present limit of 10½ hours on 5 days of the week, and that the extra half-hours thus secured to the master gives him an ample margin to meet every casualty, and leaves him no pretext for running his machinery even one minute longer. I had, as stated in my Report of the 10th of May, 1852, p. 14, directed the sub-inspectors in

"my district to prosecute in all cases where the lawful hours were not adhered to."—(*Extract from Report of Inspector T. J. Howell, for April, 1855*, p. 21.)

This Act must be construed together with stats. 3 & 4 W. 4, c. 103, *ante*, p. 9, the 4 & 5 W. 4, c. 1, *ante*, p. 31, the 7 & 8 Vict. c. 16, *ante*, p. 33, the 10 & 11 Vict. c. 29, (s. 4,) *ante*, p. 100, and the 16 & 17 Vict. c. 104, (s. 5,) *post*, p. 106, as one Act. As to construction, see *R. v. Fell*, 1 B. & Ad. 380.

By the *Ropeworks Exemption Act*, 9 & 10 Vict. c. 40, *ante*, p. 97, certain ropeworks are exempted from the operation of this Act.

Print Works are governed by Acts of parliament having special and exclusive application to them (8 & 9 Vict. c. 29, and 10 & 11 Vict. c. 70).

Bleaching Works will also be governed by Acts of parliament framed specially for them. The bills have been twice before parliament, and it is hoped that during the sessions of 1856 they will be passed.

(b) See 3 & 4 W. 4, c. 103, ss. 1, 2, *ante*, pp. 9, 10. The recital in the text is the same as in 10 & 11 Vict. c. 29, *ante*, p. 98.

And whereas by an Act 7 & 8 Vict. c. 15, intituled *An Act to amend the Laws relating to Labour in Factories*, it was enacted, that the hours of work of children and young persons in every factory should be reckoned from the time when any child or young person should first begin to work in the morning in such factory (*a*). And by the same Act, it was enacted, that no female above the age of 18 years should be employed in any factory, save for the same time and in the same manner as young persons might be employed in factories (*b*).

And whereas by an Act 10 & 11 Vict. c. 29, intituled *An Act to limit the Hours of Labour of young Persons and Females in Factories*, the hours of labour of young persons and females in factories were further restricted as therein mentioned (*c*).

And whereas it is expedient to amend the said herein-before recited Acts: Be it therefore enacted,

No young person or female to be employed before 6, a.m., or after 6, p.m., or on Saturdays after 2, p.m.] That, save as herein-after mentioned, so much of the said Acts as restricts or limits the hours of the employment or labour of young persons, and of females above the age of 18 years, shall be repealed, and and after the 5th of August, 1850, no young person, and no female above the age of 18 years, shall be employed in any factory before 6 o'clock, a.m. (*d*), or after 6 o'clock, p.m., of any day (save to recover lost time, as herein-after provided (*e*)), and no young person, and no female above the age of 18 years, shall be employed in any factory, either to recover lost time or for any other purpose, on any Saturday (*f*) after 2 o'clock, p.m. (*g*).

2. *Provision of 7 & 8 Vict. c. 15, requiring notices of times of beginning and ending work to be hung up, repealed.*] And be it enacted, That so much of the said secondly recited Act as requires notice in the form given in the schedule (C.) (*h*) to such

(*a*) See 7 & 8 Vict. c. 15, s. 26, *ante*, pp. 52, 53.

(*b*) See 7 & 8 Vict. c. 15, s. 32, *ante*, p. 59.

(*c*) See 10 & 11 Vict. c. 29, ss. 1, 2, and 3, *ante*, pp. 99, 100.

(*d*) Several prosecutions have lately been successfully instituted against persons guilty of a breach of this provision, and heavy fines and costs inflicted.

(*e*) See 3 & 4 W. 4, c. 103, s. 1, n. (*c*), *ante*, p. 9, and 7 & 8 Vict. c. 15, ss. 33, 34, *ante*, p. 59, and 16 & 17 Vict. c. 104, s. 1, *post*, p. 106, which last Act specially relates to the employment of children, and confers the same benefits upon them. See *Ryder v. Mills*, 3 Ex. Rep. 863; S. C. 19 L. J. 82, M. C., and

ante, p. 53, n. (*o*). Several prosecutions have lately been successfully had against persons violating this clause.

(*f*) Various prosecutions have of late been instituted for a breach of this clause, and the guilty parties have properly been subjected to the infliction of a heavy fine and costs.

(*g*) See 7 & 8 Vict. c. 15, s. 32, *ante*, p. 59. Several mill occupiers have of late been fined, and had to pay heavy costs for the violation of this clause. The clause in the text applies to *young persons and females* only, and not to *children* expressly. This defect has been remedied by stat. 16 & 17 Vict. c. 104, s. 1, *post*, p. 107.

(*h*) *Ante*, p. 91.

Act, of the hours of work of all young persons and females above the age of 18 years, employed in the factory, to be hung or fixed up in any factory (a), and so much of the same Act as enacts that in any complaint of the employment of any person in a factory otherwise than is allowed by that Act, the time of beginning work in the morning which shall be stated in any notice fixed up in the factory, signed by the occupier or his agent, shall be taken to be the time when all persons in the factory (except children beginning to work in the afternoon), began work on any day subsequent to the date of such notice, so long as the same continued fixed up in the factory (b), shall be repealed.

3. And whereas by the said secondly recited Act it was enacted, that the times allowed for meal times as provided by the said firstly recited Act, should be taken between half-past 7, a.m., and half-past 7, p.m. (c) : Be it enacted,

Meal times to be taken between half-past 7, a.m., and 6, p.m.] That the times allowed for such meal times as aforesaid shall be taken between half-past 7, a.m., and 6, p.m ; And (subject to such alteration as aforesaid) all the provisions of the said firstly and secondly recited Acts (d) concerning meal times and notice of meal times shall remain applicable to all young persons, and to all females above the age of 18 years, employed in any factory.

4. And whereas by the said secondly recited Act it was enacted, that in any factory in which any part of the machinery was moved by the power of water, the time which should have been lost by stoppages from want of water, or from too much water, might be recovered within 6 months next after the stoppage, between the hours specified in the said firstly recited Act as those within which time lost by drought or excess of water might be recovered, and that in order to recover time so lost any child or young person might be employed 1 hour in each day more than the time to which the ordinary labour of children and young persons respectively was restricted by law, except on Saturday (e) : Be it enacted,

Young persons or females not to be employed under 7 & 8 Vict. c. 15, in recovering lost time after 7, p.m.] That no young person, and no female above the age of 18 years, shall, in order to recover time so lost as aforesaid, be employed after 7 o'clock, p.m., of any day ; and the times before 6 o'clock, a.m., and after 6 o'clock, p.m., during which any such young person or fe-

(a) See 7 & 8 Vict. c. 15, s. 28, *ante*, p. 58.

(b) See 7 & 8 Vict. c. 15, s. 52, *ante*, p. 71.

(c) See 7 & 8 Vict. c. 15, s. 36, *ante*, p. 61.

(d) See 3 & 4 W. 4, c. 103, s. 6, and 7 & 8 Vict. c. 15, s. 36.

(e) See 7 & 8 Vict. c. 15, s. 38, *ante*, p. 59, and 16 & 17 Vict. c. 104, *post*, p. 108, which specially relates to the employment of children.

male is so employed in any day shall not together exceed 1 hour (a).

5. And whereas by the said secondly recited Act it was enacted, that in any factory in which any part of the machinery was moved by the power of water, when the stream was so diminished by drought, or swollen by flood during any part of the day, that any part of the manufacturing machinery driven by the water-wheel had been stopped by reason of such drought or flood, the young persons who would have been employed at such machinery might recover such lost time during the night next following the said day, unless the said day were Saturday (b); provided that no such young person should be employed during any 24 consecutive hours for a greater number of hours than that to which the ordinary daily labour of such young persons in factories was otherwise restricted by law, and that no young person so employed in the night should work more than 5 hours without an entire cessation from work of at least 30 minutes (c): Be it enacted,

Time during which young persons and females may be employed under 7 & 8 Vict. c. 15, s. 34, in recovering lost time.] That for the purposes of the last-recited enactment the word "night" shall include the whole period between 6 o'clock, p.m., and 6 o'clock, a.m. (d). And no young person, and no female above the age of 18 years, shall be employed to recover such lost time as last aforesaid during any 24 consecutive hours for more than 10 hours and a half. And, save as hereinbefore mentioned, young persons and females may be employed to recover lost time according to the provisions of the said secondly recited Act.

6. *Power to employ young persons from 7, a.m., to 7, p.m., from 30th Sept. to 1st April, under certain regulations.*] Provided always, and be it enacted (e), That during all or part of the period between the 30th of September of any year, and the 1st of April of the following year, young persons, and females above the age of 18 years, may be employed, except on Saturday, between 7 o'clock, a.m., and 7 o'clock, p.m., instead of the hours hereinbefore limited, under the following regulations and conditions (f), (that is to say,)

Notice signed by the occupier of any factory, or his

(a) This clause is a modification of 7 & 8 Vict. c. 15, s. 33, *ante*, p. 59.

(b) See stat. 16 & 17 Vict. c. 104, *post*, p. 108, which specially relates to the employment of children.

(c) See 7 & 8 Vict. c. 15, s. 34, *ante*, p. 60.

(d) The inspectors have of late shown a laudable determination to carry out this law, and have in most cases prose-

cuted the offending parties, and subjected them to the infliction of fines and heavy costs.

(e) An analogous clause to this, but relating to children, is the 16 & 17 Vict. c. 104, s. 2, *post*, p. 108.

(f) See 3 & 4 W. 4, c. 103, s. 2, *ante*, p. 10, and 7 & 8 Vict. c. 15, s. 32, *ante*, p. 59.

agent, of the intention to employ young persons and females under this provision, specifying the period, not being less than one month, during which they are to be so employed in such factory, shall be given to one of the inspectors of factories.

And a notice to the like effect, in such form as shall be approved by such inspector, and signed by such occupier, or his agent, and by such inspector, shall be hung or fixed up, and during the period specified in the notice shall be kept fixed up, according to the directions for other notices in the said secondly recited Act (a), in such factory.

And during the period specified in such notice, young persons and females above the age of 18 years, may be employed in such factory after 6 o'clock, and not later than 7 o'clock, p.m., of any day except Saturday.

And during the period specified in such notice (save to recover lost time as herein provided) no young person, and no female above the age of 18 years, shall be employed in such factory before 7 o'clock, a.m., of any day, except Saturday.

And the provisions hereinbefore contained shall, as to every day, except Saturday, during the period specified in such notice, take effect as if 7 o'clock, a.m., and 7 o'clock, p.m., were throughout substituted for 6 o'clock, a.m., and 6 o'clock, p.m., respectively.

7. *Repeal of provision in 7 & 8 Vict. c. 15, as to children above 11 years of age employed solely in winding and throwing of raw silk.*] And whereas by the said secondly recited Act it was enacted, that any child above 11 years of age, employed solely in the winding and throwing of raw silk, and who shall have obtained the surgical certificate required by this Act of his having completed his 11th year, may work, (without any proof of having attended a school,) for any time not exceeding 10 hours on any working day, but not after half-past 4 o'clock, p.m., of any Saturday (b).

And whereas it is expedient that so much of the said recited Act should be repealed: Be it therefore enacted,

And in lieu thereof children above 11 may be employed as young persons.] That so much of the said Act as is hereinbefore recited shall be, and the same is hereby repealed; and in lieu thereof it shall be lawful for any child employed solely in the winding and throwing of raw silk, who shall have obtained the surgical certificate required by the said secondly recited Act of his having completed his 11th year, to be employed in all respects as young persons may be employed under this Act.

(a) See 7 & 8 Vict. c. 15, s. 28, *ante*, p. 56.

(b) See 7 & 8 Vict. c. 15, s. 72, *ante*, p. 79.

lost time or for any other purpose on any Saturday after 2 o'clock, p.m. (a).

2. *Power to employ children in the hours between 7, a.m., and 7, p.m., from 30th of Sept. to the 1st of April, under certain regulations.*] Provided always (b), That during all or part of the period between the 30th of September of any year and the 1st of April of the following year children may be employed in any factory, except on Saturday, after 6 until 7 o'clock, p.m., under the following regulations and conditions; (that is to say,) notice signed by the occupier of any factory or his agent of the intention to employ children under this provision, specifying the period, not being less than one month, during which they are to be so employed in such factory, shall be given to one of the inspectors of factories.

And a notice to the like effect, in such form as shall be approved by such inspector, and signed by such occupier or his agent and by such inspector, shall be hung or fixed up, according to the directions for other notices in the said secondly-recited Act (c), in such factory, and during the period specified in such notice children may be employed in such factory after 6 o'clock and not later than 7 o'clock of any day except Saturday, and during the period specified in such notice (save to recover lost time, as herein provided) (d), no child shall be employed in such factory before 7 o'clock, a.m., of any day except Saturday.

3. *Children not to be employed under 7 & 8 Vict. c. 15, s. 33, in recovering lost time, after 7, p.m.*] And whereas by the said 7 & 8 Vict. c. 15, s. 33 (e), it was enacted, That in any factory in which any part of the machinery was moved by the power of water the time which should have been lost by stoppages from want of water or from too much water might be recovered within six months next after the stoppage between the hours specified in the said firstly-recited Act (f) as those within which time lost by drought or excess of water might be recovered, and that in order to recover time so lost any child or young person might be employed 1 hour in each day more than the time to which the ordinary daily labour of children and young persons respectively

(a) This clause brings *children* within the same provisions as the 13 & 14 Vict. c. 54, s. 1, *ante*, p. 102, did *young persons* and *females* above 18.

(b) An analogous clause to this, but relating to *young persons* and *females* above 18, is the 13 & 14 Vict. c. 54, s. 6, *post*, p. 104.

(c) 7 & 8 Vict. c. 15, ss. 33 and 34 of which require the notice to be fixed up in the entrance of the factory, and in such other places as an inspector or

sub-inspector may direct. See form in schedule (C.) of such Act, *ante*, p. 91.

(d) See 13 & 14 Vict. c. 54, ss. 4, 5, and notes thereon, *ante*, p. 103.

(e) The marginal note of the printed Act mentions s. 36 instead of s. 33, as in the text. It is, however, clear that the latter section is the one referred to. See the section, *ante*, p. 59.

(f) The hours specified in 3 & 4 W. 4, c. 105, s. 3, are between 5 in the morning and 9 in the evening. See *ante*, p. 11.

was restricted by law, except on Saturday (*a*) : Be it therefore enacted,

That no child shall, in order to recover time so lost as aforesaid, be employed after 7 o'clock, p.m., of any day ; and the times before 6 o'clock, a.m., and after 6 o'clock, p.m., during which any such child is so employed in any day shall not together exceed 1 hour.

4. *Hours of employment of children not to be extended.*] Nothing in this Act shall be construed to authorize the employment of any children in any factory for any longer time in any day than is now authorized under the said recited Acts (*b*), or to interfere with or affect the provisions of the said Acts as to meal times (*c*) or holidays (*d*), or any other provisions whatsoever of the said Acts, save so far as the same authorize the employment of children between any other hours of the day than are limited by this Act.

5. *How construed.*] The herein-before recited Acts (*e*) as amended by this Act, shall be construed together as one Act.

6. *Commencement of Act.*] This Act shall commence and take effect on the 1st of September, 1853.

(*a*) See 7 & 8 Vict. c. 15, s. 33, *ante*, p. 59, and 13 & 14 Vict. c. 54, ss. 4, 5, *ante*, pp. 103, 104.

(*b*) The recited Acts are 3 & 4 W. 4, c. 103, *ante*, p. 9, 7 & 8 Vict. c. 15, *ante*, p. 33, 10 & 11 Vict. c. 29, *ante*, p. 98, and 13 & 14 Vict. c. 54, *ante*, p. 101.

(*c*) See 3 & 4 W. 4, c. 103, s. 8, *ante*, p. 12, 7 & 8 Vict. c. 15, s. 36, *ante*,

p. 61, and 13 & 14 Vict. c. 54, s. 3, *ante*, p. 103.

(*d*) See 3 & 4 W. 4, c. 103, s. 9, *ante*, p. 13, 7 & 8 Vict. c. 15, s. 37, *ante*, p. 62.

(*e*) 3 & 4 W. 4, c. 103, *ante*, p. 9, 7 & 8 Vict. c. 15, *ante*, p. 33, 10 & 11 Vict. c. 29, *ante*, p. 98, and 13 & 14 Vict. c. 54, *ante*, p. 101. As to the construction of several Acts, see *R. v. Fell*, 1 B. & Ad. 380.

The Factory Act, 1856.

19 & 20 VICT. c. 38.

An Act for the further Amendment of the Laws relating to Labour in Factories (a). [30th June, 1856.]

WHEREAS an Act was passed in the session of parliament held in the 7th & 8th years of Her present Majesty's reign, cap. 15 (b), intituled *An Act to amend the Laws relating to Labour in Factories*:

And whereas by section 21 of such Act (c) it was amongst other things enacted, that all parts of the mill-gearing in a factory should be securely fenced; and by section 43 of such Act (d) provision was made for referring to competent persons as arbitrators all questions relating to machinery which an inspector or sub-inspector might observe in a factory not securely fenced, and which he might deem to be likely to cause bodily injury, and of which he should give notice to the occupier of a factory; and by sections 59 & 60 (e), certain penalties are incurred for not fencing such machinery, and for any accident arising from such non-fencing, and for any disobedience of the notice given by such inspector or sub-inspector:

And whereas doubts have arisen as to the true construction of the said several sections; and it is expedient that such doubts should be removed, and that the aforesaid provision of the said Act should be explained and amended: Be it enacted:—

1. *Short title.*] This Act may be cited for any purpose as “The Factory Act, 1856.”

(a) The passing of the above Act of parliament 19 & 20 Vict. c. 38, has been rendered desirable for the removal of certain doubts which had arisen, as to the true construction of several sections of the statute 7 Vict. c. 15, sections which have relation to matters of detail merely, and are unconnected with the humane political principles upon which the Factory Acts are founded. Looking, however, at the practical inoperation of the 7 & 8 Vict. c. 15, s. 43, it is feared that the Act now under consideration will not only prove

inoperative for the prevention of accidents from mill-gearing, but injurious in other respects. However, as both the government and the mill occupiers must desire that the intention of the legislature shall be practically effective, it may be, as it is hoped, that the last Act of the legislature will not, like its predecessor, become a dead letter.

(b) *Ante*, p. 33.

(c) *Ante*, pp. 44, 45.

(d) *Ante*, pp. 66, 67.

(e) *Ante*, pp. 73, 74.

2. *Commencement of Act.*] This Act shall commence and take effect on and from the 1st June, 1856.

3. *Recited Act and this Act to be one.*] The said recited Act (a) and this Act shall be construed and executed as if they were one Act (b).

4. *Section 21 to apply only to mill-gearing liable to come into contact, &c.*] The said section 21, so far as the same refers to the mill-gearing, shall apply only to those parts thereof with which children and young persons and women are liable to come in contact, either in passing or in their ordinary occupation in the factory.

5. *The word "machinery" in section 43, to extend to other mill-gearing.*] The word "machinery" in the said section 43(c) shall be considered as applicable to and including all other parts of the mill-gearing in a factory with which children and young persons are not liable to come in contact in passing or in their ordinary occupation in the factory. And the word "machinery," in the 24th(d), 42nd(e), 59th(f), and 60th(g) sections of such Act, shall be considered as applicable to and as including mill-gearing.

6. *Penalty for not fencing machinery after notice.*] Where, under the said section 43(h) as amended by this Act, an inspector or sub-inspector gives notice in writing to the occupier of a factory or his agent in relation to any part of the machinery or any driving strap or band not securely fenced which such inspector or sub-inspector deems likely to cause bodily injury to any person employed in the factory, if the occupier of such factory do not within the time in this behalf limited by the said section make application in writing for referring the question of the fencing of the machinery, strap, or band to which the notice refers to arbitration, and with the least possible delay appoint an arbitrator, or if the decision in any such arbitration be that it is necessary and possible to fence the said machinery, strap, or band, the occupier of the factory shall be liable to a penalty of not less than five pounds

(a) The recited Act is 7 & 8 Vict. c. 15, *ante*, p. 83.

(b) Though this clause simply directs that the 7 & 8 Vict. c. 15, and the 10 & 20 Vict. c. 38, shall be construed and executed as if they were one Act, yet it must be remembered that by the 73rd section of the 7 & 8 Vict. c. 15 (*ante*, p. 80), such last-mentioned Act and the 3 & 4 W. 4, c. 103, are directed to be construed together as one Act. Again, by the 10 & 11 Vict. c. 29, s. 4 (*ante*, p. 100), such last-mentioned Act and the 7 & 8 Vict. c. 15, shall be construed together as one Act. Again, by

the 18 & 14 Vict. c. 54, s. 9 (*ante*, p. 106), such last-mentioned Act and the 7 & 8 Vict. c. 15, and other Acts shall be construed together as one Act; and again, by 16 & 17 Vict. c. 104, s. 5 (*ante*, p. 109), such last-mentioned Act, and the 7 & 8 Vict. c. 15, are directed to be construed as one Act.

(c) *Ante*, p. 86.

(d) *Ante*, p. 52.

(e) *Ante*, p. 86.

(f) *Ante*, pp. 73, 74.

(g) *Ante*, p. 74.

(h) *Ante*, p. 86.

and not more than twenty pounds if he do not within a reasonable time after such notice or decision (as the case may be) cause such machinery, strap, or band to be well and securely fenced, and at all times thereafter keep the same well and securely fenced (a).

(a) As regards the liability of mill occupiers to pay damages for injuries to the persons of factory workers, the late case of *Casswell v. Worth*, 25 L. J. 121, Q. B., decides, that when an action at common law and not on the stat. 7 Vict. c. 15, is brought against a mill occupier for an injury sustained by machinery, the person injured cannot recover if by his own negligence or misconduct he contributed to the damage he has sustained. The declaration was for an injury to the plaintiff, alleged to have been caused by the neglect of the defendants to fence the shaft of certain machinery in motion for the manufacture of carpets, contrary to the provisions of the Factory Act, 7 & 8 Vict. c. 15. The defendants pleaded, admitting that the shaft was in motion, and not properly fenced, that the part of the machinery, namely, a certain driving strap, by which the plaintiff was entangled, was not in motion at the time of the alleged injury, but, on the contrary, wholly at rest. That the plaintiff wilfully and wrongfully, against the will and contrary to the express command of the defendants, touched and caught hold of and thereby set in motion such strap, the plaintiff then well knowing that it was dangerous, improper, and contrary to the express command of the defendants for him to touch or meddle with the same, and thereby, and not by reason merely of the negligence of the defendants, the injury was occasioned. The court held upon demurrer that, assuming the common law right to bring an action for an injury occasioned by the alleged unlawful act existed, yet it was subject to the principle that the plaintiff did not by his own negligence contribute to the injury, and, therefore, that the plea was an answer to the present action.

Lord Campbell, C. J.: We all agree that the plea is an answer to the action. We must assume that all that it alleges is true. The Factory Acts, passed for the protection of persons employed in factories, I believe have had a very salutary effect, but they would have a most unjust and oppressive operation if this action could be maintained. It is admitted that the shaft was not fenced

as it ought to have been, but the plaintiff knew that what he was doing was improper, and being commanded not to do so by the person who had authority to give the command, wilfully laid hold of the strap that was at rest, and thus caused the injury to himself. If this action were maintainable the defendants might also be made liable, if, instead of the strap, he had actually laid hold of the shaft, knowing that his arm would be broken, and his arm was in consequence broken. The legislature has very properly interfered for the protection of young persons in factories, but it would be contrary to all principle to hold that the plaintiff, having himself by his own misconduct wilfully caused the injury to himself, may maintain an action for compensation. Then there are the authorities that have been referred to, and amongst them the case of an obstruction in the highway, in which it was held that, although there be an obstruction which would be indictable, yet if a person to whom an injury is caused by the obstruction could by ordinary care have passed he cannot maintain an action. To say that this action is maintainable would be going much further than that case, supposing it had been held that the action was maintainable, because here there was wilful misconduct on the part of the plaintiff in acting contrary to the commands of those who had a right to give such commands. I am of opinion, therefore, that the plea discloses facts which, if supported by evidence, would be a good defence to the action, and that the defendant is entitled to judgment.

Coleridge, J.: I also think that the plea is an answer to the action. The legislature has interfered and made it unlawful to do certain acts, and has also imposed certain penalties, but beyond that our judgment now assumes that a person sustaining injury by the unlawful act has a common law remedy by action; that remedy, however, must be in accordance with common law principles, and one of these principles is, that a person contributing to his own injury cannot maintain an action for such injury, and if any plea could raise a defence upon this principle

favourable for the defendant this plea undoubtedly does. Our decision in the present case does not interfere in the case in *Lynch v. Nurdin*, 1 Q. B. 29; S. C. 10 L. J. 73, Q. B., or with the construction of the Act, if it had appeared that this was the case of a young person shown to be within the policy of the Act as to which a different principle may prevail from that which applies in the case of an adult person contributing to his own injury or who is the cause of it.

Wightman, J.: The plaintiff alleges that the defendants neglected the duty imposed upon them by the Act as regards the fencing of the machinery, and by reason thereof he is injured. The plea, which must be taken to be true, alleges that the injury was by no means occasioned by the defendants' negligence, but by the plaintiff's wilful misconduct in disregarding the command given to him not to touch or interfere with the strap, which at the time was in a state of rest, and incapable of doing injury. The plaintiff himself neglects the command and sets the machinery in motion which caused the injury, knowing that it was dangerous and that evil results might follow if he did so. The accident then appears to have been occasioned wholly by the misconduct or neglect of the plaintiff himself, and all the authorities show that the plea discloses a good defence.

Crompton, J.: By the Act it is unlawful to employ the machinery without it is fenced, and if by reason of such unlawful act an injury is sustained, the person injured has a common law remedy by an action on the case. It is like the case of an injury caused by digging a hole in the highway or any other unlawful act. It is said it is different here, because the injury was the consequence of an act made illegal by statute, but the same rule must equally apply, namely, that if a person might by ordinary caution have avoided the injury the action will not lie. Here the plaintiff's own misconduct caused the injury, and the plea is clearly good.

—*Judgment for the Defendants.*

The case of *Doel v. Sheppard and others*, 25 L. J. 125, Q. B. was as follows: To a declaration upon the 7 Vict. c. 15, for not fencing a shaft, being part of mill-gearing in motion in a factory, whereby the plaintiff was injured by it, the defendant pleaded, that the shaft was not near to where any person was employed, but was at such a distance and height away from the nearest place

of approach thereto, and was so situated that no danger or liability to accident existed therefrom, so as to require it to be fenced. The court held that the plea was no answer to the action. As this judgment of the court of Queen's Bench is one that concerns the fencing of all shafts at whatever height from the ground or floor, we here give a *verbatim* report of the arguments of the case.

Mr. Welsby: My Lords, in this case the first special plea is framed almost in the same terms as in the case of *Casemell v. Worth* (*ante*, p. 110c), which your lordships have just disposed of. It contains allegations, I think, amounting to the same thing, and your lordships' judgment in the former case will apply so far as regards that plea. But there is another special plea, raising another important question under the Factory Act, upon which it is very desirable that your lordships should pronounce your opinion, and I may shortly state what it is.—Lord Campbell: We are bound to hear it.—Mr. Welsby: It is the third plea, and it says, "that the said shaft was not near to where children or young persons, or any persons, were likely or liable to pass or be employed; and that no person was endangered or likely or liable to be endangered thereby. But the defendants in fact say, that before and at the said time when, &c. the said shaft was at such a distance and height away from and above the nearest floor, or other place of access or approach to the same, and was in that respect and otherwise so placed and situated in the said mill or factory that there did not exist any such danger of or liability to accident or injury from the said shaft as to call for or require such fencing of the same as in the said declaration mentioned."—Lord Campbell: Then it is said, that this is a shaft which would not require to be fenced.—Mr. Welsby: So they say, my lord; by reason of its position. They admit that it is a part of the mill-gearing. And I may dispose of the first portion of the plea, which talks about children or young persons, because that supposes something which is mentioned in the first part of the 21st section: "That every fly-wheel directly connected with the steam-engine or water-wheel or other mechanical power, whether in the engine-house or not, and every part of a steam-engine and water-wheel,

"and every hoist or teagle, near to which children or young persons are liable to pass or be employed;" whereas the declaration is founded upon the other part of the section, which says, that "all parts of the mill-gearing in a factory shall be securely fenced." Then, taking this shaft to be part of the mill-gearing in the factory, what the plea states in effect is, that this particular shaft was so high up from the ground that danger was sufficiently guarded against by its position and height without its being fenced. Now I apprehend that that defence cannot prevail against the positive injunction of the Act of parliament, that all parts of the mill-gearing must be securely fenced. It must be taken that the legislature has considered the cases, and has ascertained that in all cases, wherever the shaft or other part of the mill-gearing is placed, there is a possibility of danger if it is not securely fenced, and the case which your lordships have just disposed of, is a sufficient exemplification of that.—Mr. Justice Crompton: We must take this coupled with the averment in your declaration, that it was by reason of this breach of a statutory duty that the injury happened.—Mr. Welsby: Yes, my lord.—Mr. Justice Crompton: They do not deny that?—Mr. Welsby: No, they do not. They say, "true, it was not fenced; true, it was part of the mill-gearing which ought to have been fenced; true, you were injured because it was not fenced; but in effect it was seven or eight feet from the ground."—Mr. Justice Wightman: And we were not bound to fence it?—Mr. Welsby: Yes, my lord.—Mr. Justice Crompton: In effect, they differ in judgment from the legislature.—Mr. Maynard: My lords, I appear upon the other side, and I will merely make a few observations upon this plea, the parties particularly interested in these questions being very anxious to have your lordships' determination upon the question.—Lord Campbell: We are bound to give our opinion upon the sufficiency or insufficiency of the plea.—Mr. Maynard: I submit to your lordships, that it is a question upon the construction of the statute, and that the statute is not necessarily to be interpreted to the full extent which the words at first sight, perhaps, may appear to require.—Lord Campbell: It must be so interpreted, unless you show that at second sight they are not appli-

cable.—Mr. Maynard: That is what I propose to do. I say, that of course your lordships are not to make laws, but to interpret them; and that therefore this is purely and simply a question of construction. But I say in the second place, that this is not a case where the meaning of the Act of parliament is actually upon the surface, so that your lordships have no discretion what meaning to give to the phrases employed. In such a case you may be bound to construe the statute, however unreasonable it may appear, literally and strictly; but I say that this is not such a case. And I would first of all call your lordships' attention to the rule as to the construction of statutes which is laid down by Mr. Baron Parke, as he was at that time, in the case of *Carlisle v. Gardiner*.—Lord Campbell: We are tolerably familiar with that rule.—Mr. Maynard: He says this: "I take it to be the duty of courts to 'construe Acts clearly.'" Lord Campbell: It would be as well that you should tell us how we are to put this construction upon this section of this Act of parliament.—Mr. Maynard: Then I say that this rule which I now propose to state is a link in the reasoning.—Lord Campbell: Would it not be convenient for you first to tell us what you propose to do?—Mr. Maynard, I propose to show your lordships that fencing does not necessarily mean the sort of fencing the absence of which is complained of in this case, but that it clearly may mean, and does for the purposes of this Act mean, anything which prevents danger.—Lord Campbell: It is not fenced.—Mr. Maynard: Yes, my lord; but fencing does not necessarily mean a barrier consisting of wood or some material. I say that anything which prevents danger, and prevents access or approach to the shaft, is a sufficient fencing within the meaning of the statute.—Mr. Justice Coleridge: Then you should have said that it was fenced.—Mr. Maynard: My lord, that is under the plea of not guilty; this, in point of fact, raises the question.—Mr. Justice Wightman: You must treat this as the only plea for this purpose.—Mr. Maynard: The plea, no doubt, is argumentative, but that constitutes at present no objection. If the court can see upon the plea, as an argumentative plea, that there is a good defence upon this ground under the general issue, then the plea in the present state of the law is a good

plea, notwithstanding it is an argumentative one. Now I say first of all, that the word "fencing" does not necessarily import a barrier of wood or of any other material.—Lord Campbell: What barrier do you say was there?—Mr. Maynard: The plea states, my lord, that a barrier or the means of preventing approach existed in the situation of the shaft itself, and that that was sufficient.—Lord Campbell: In short, that it did not require fencing?—Mr. Maynard: That it did not require fencing. But let us for one moment inquire what the meaning of the term "fencing" is.—Lord Campbell: That it did not require such fencing; that is to say, that the legislature ought not to have required it to be fenced.—Mr. Maynard: No, my lord; but the question is what the legislature does require by the term "fencing," because the legislature does not explain whether it is to be a box or a cage, or what it is to be.—Lord Campbell: Take the plea apart from technical language. Will you say what it does allege?—Mr. Maynard: It alleges this, that the shaft was so situated that there was no danger from it; that is to say, that the shaft was so situated that a fence would be useless.—Lord Campbell: That it was unnecessary to fence it.—Mr. Justice Coleridge: I thought you said that it was fenced by its position.—Mr. Maynard: That is my argument. I am told that there is a case which is not reported, the case of *Schofield v. Schunk*, which has been already before your lordships' court, in which the question was whether Mr. Justice Crowder had rightly directed the jury that the fencing required by the statute was such fencing as was in use in the manufacturing districts.—Lord Campbell: We held that that was an improper direction, because, although the fencing in that district might be of that description, the Act of parliament absolutely requires that it shall be securely fenced.—Mr. Maynard: Yes, my lord. That case, in consequence of your lordships' decision upon that point, went down to a second trial; and I am informed (I cannot find it in print, but I have it upon good authority) that Mr. Justice Cresswell, who tried the action the second time, expressed himself in these words: "Fencing is what—ever prevents people from coming near the shaft."—Mr. Justice Wightman: The statement in the declaration is, that the shaft was not securely fenced, contrary to the Act, by which neglect the

accident happened. Your plea is, that there did not exist any such danger as to call for or require such fencing as in the declaration mentioned.—Mr. Maynard: Yes, my lord, the fencing which the declaration says was wanted,—that is, something which it was the bounden duty of the defendants themselves to put there.—Mr. Justice Wightman: The plea is, that it was in such a situation that it did not require to be securely fenced.—Mr. Maynard: That it did not require to be securely fenced, except in the way in which this plea alleges that it was fenced.—Mr. Justice Wightman: It does not allege any.—Mr. Maynard: Yes, my lord, it alleges that it was sufficiently fenced,—that is, that the approach of the people to it was sufficiently prevented by its situation; and we say that is fencing.—Lord Campbell: It does not allege that anything was done.—Mr. Maynard: No, my lord, except that it was so placed (which was doing something) as to be out of danger.—Mr. Justice Wightman: The declaration says it was not securely fenced. Is the effect of your plea that it was securely fenced, or that it did not require to be securely fenced?—Mr. Maynard: I say it was securely fenced. The terms of the plea may not perhaps be strictly correct.—Mr. Justice Crompton: It is, in effect, that it did not require such fencing as the Act of Parliament directs.—Mr. Maynard: No, my lord; that it did not require such fencing as the declaration complains of the want of.—Mr. Justice Crompton: That is, the fencing in the Act of Parliament.—Mr. Justice Wightman: That is, being "securely fenced," which are the terms of the Act of parliament.—Mr. Maynard: Those are the terms of the Act of parliament, but we say that the condition, the position and situation, the distance from the floor and from all places of access, was itself, within the meaning of the Act of parliament, the secure fencing required. Now, my lords, as to fencing, "fencing" is, I submit to your lordships, a somewhat equivocal word. The machinery in the present case was so placed that its position was a fencing; and I am about to explain how that may be. I say that "fencing" is a term susceptible of the meaning which we seek to give it in this case; and I would call your lordships' attention upon that subject to the case of *Ellis v. Arnison*, in 1st Barnewall and Cresswell's Reports. That was a case in which a ditch was held to satisfy an

Enclosure Act which required a fence, because the court said that a fence meant nothing more than a sufficient guard to keep off people, and that a ditch was such a guard. Now there is no greater incongruity in saying that in this case the position and distance of the shaft in question satisfies the requirement of the statute as to fencing, than in saying that a ditch satisfies the term "fence."—Mr. Justice Wightman: Then your allegation is, that it was securely fenced?—Mr. Maynard: The allegation is, that it was securely fenced. I say that that is an argumentative issue.—Lord Campbell: No.—Mr. Justice Wightman: You say it was not securely fenced because it did not require it.—Lord Campbell: You must rely upon the words of the statute.—Mr. Maynard: The words of the statute are these.—Mr. Justice Wightman: You must connect them with the declaration.—Mr. Justice Coleridge: You had better read the declaration.—Mr. Maynard: The declaration says, "that the defendants disregarded their duty in this behalf and the statute in that case made and provided, in this, that the said horizontal shaft was not then securely fenced, contrary to the form of the statute." Then the plea is, that danger "was sufficiently guarded" and provided against by such position and situation of the said shaft as "aforesaid without such fencing;" that is, such fencing as the declaration says it ought to have had.—Mr. Justice Wightman: That is, a secure fencing, whatever it may be.—Lord Campbell: It is, that it did not require to be securely fenced. You do not say that it was securely fenced, but that it did not require to be securely fenced.—Mr. Maynard: Then the question is, whether, if it does not require to be securely fenced, that is not the same thing as saying that it was securely fenced.—Lord Campbell: But the Act says that it shall be securely fenced.—Mr. Maynard: I say that the statutes are not to be interpreted literally; and this shows that I was not going to do wrong when I wished to call your lordships' attention to the rule laid down in this respect as to the interpretation of statutes. Mr. Baron Parke says, in the case of *Carlisle v. Gardiner*, "I take it to be the duty of courts to construe Acts clearly, and that duty is to be performed by construing them accordingly to the legal, ordinary, and grammatical sense of the words used, unless such construction would be inconsistent

"with the purpose of the legislature, express or implied." Now what can the purpose of the legislature be supposed to be in this case? Surely, to prevent any danger from shafts. If, therefore, danger is sufficiently prevented by other means, then the legislature may fairly be supposed to have meant by fencing, what prevents damage.—Mr. Justice Coleridge: "Not fencing," that is what you say.—Mr. Maynard: "Not fencing," if it is not required. Then I will call your lordships' attention to a case.—Lord Campbell: We feel strongly upon the point, that "not fencing" cannot be called "securely fencing."—Mr. Maynard: Will your lordships excuse my troubling you? I pass from that point; but I wish to call your lordships' attention to a point which the case of *Coe v. Platt*, in 7th Exchequer Reports, page 928, appears to raise upon this subject. Mr. Baron Alderson in that case was explaining why shafts were by the statute required to be fenced only when in motion for a manufacturing purpose; and he says that this is the reason, that it is then only that persons are in attendance upon them. He goes on to infer from that, that the statute requires them to be fenced only when persons are in attendance upon them, and in the room where persons are in attendance upon them, and where the manufacturing process is going on, and he says he has no doubt that that is the right interpretation of the statute. Now that distinctly recognises the principle that the requirement of the statute to fence shafts is subject to such an exception as this plea seeks to set up, namely, that it is only required in rooms and places where there is danger. My lords, I say, that if a shaft in a room where a manufacturing process is not going on, although in motion for a manufacturing purpose, does not, according to Mr. Baron Alderson's opinion, require fencing in that room, it cannot require fencing, although in the same room, where it is entirely out of reach, and entirely out of the way of causing any accident. I therefore submit upon these grounds that the statute ought not in this respect to be interpreted strictly and literally, but that a fair and reasonable interpretation, which is consistent with what we clearly see to have been the purpose of the legislature, would be to hold that the shafts in question require to be fenced only in cases where they are in a position and situation to be likely to be the cause of danger.

This is the view which I am told a great many of the magistrates by whom this statute has to be applied in the country take of it, and I am informed they are in the habit of holding that shafts so situated as this shaft was, are not within the mischief which the statute intended to provide against, and therefore that the statute is not applicable to them. My lords, I hope there is nothing absurd in the observations which I have endeavoured to address to your lordships; it is exceedingly desirable that this point should receive a decision.—Lord Campbell: The sooner a mistake upon the construction of the Act of parliament is rectified the better. I think I need say no more than that this appears to be a very erroneous interpretation, because it is not an interpretation of the Act of parliament; it is a repeal of the Act of parliament. What is contended for now is wholly at variance with the language of the legislature. They clearly have not said in this 21st section, that where there shall be danger the part of the machinery shall be fenced, but they point out in the most absolute manner that it shall in all cases which are here mentioned be securely fenced. It clearly amounts to this, that the defendants ought to have taken the Act of parliament literally, and not to have left it to the discretion of the magistrates, or the judgment of a jury, whether the obligation should only be imposed in the particular place where it was necessary. The legislature may have thought that that might lead to very great peril, and that it was

much more expedient to lay down a universal rule. That rule has been disobeyed by the defendants, and by this plea they set up no sort of answer. The second plea we hold to be a good plea, and therefore they are entitled to our judgment upon that.—Mr. Justice Coleridge: I am entirely of the same opinion. It appears to me that the policy of the legislature is expressed as plainly as words can express it in this particular section upon which we are now called upon to decide; for, first, there is an injunction as to certain parts of the machinery, and it is intimated there that every part near to which children or young persons are liable to pass or be employed shall be securely fenced; but the legislature are not satisfied with that, but they then go on with these words, which are utterly without qualification and in the largest possible form, "and all parts of the mill-gearing in a factory shall be securely fenced." I think after that, to introduce a limitation, and to say, this is to be fenced, and that is not to be fenced, according to the notion which persons may have in a particular case whether danger is likely to result from the want of fencing, is not interpreting the law, but making a new law.—Mr. Justice Crompton: The very policy of the Act of parliament is to make all these things negligence. They might probably before have been taken to be negligence. The statute means to say that in all cases they shall be taken to be negligence.

INDEX.

A.

- Abstract to be hung up of 3 & 4 Will. 4, c. 103, pp. 21, 56; also abstract of 7 & 8 Vict. c. 15, p. 56; to be renewed when illegible, 56, 57.
- Accidents, from unguarded machinery, 44, 45, 46, 47, *et notis*; notice of causing bodily injury, 48, 51; to be inquired into by surgeon, 51; to report thereon to factory inspectors, 51; inspector may direct actions for compensation, 52; application of compensation, 52; course, if verdict for defendant, 52; provision for costs and charges, 52.
- Action. See "*Compensation for Injury.*"
- Acts of parliament, copies of 42 Geo. 3, c. 73, to be hung up, 6; abstract of 3 & 4 Will. 4, c. 103, pp. 21, 53, 56; as to abstract of 7 & 8 Vict. c. 15, pp. 53, 56; construction of 3 & 4 Will. 4, c. 103, p. 28; of 10 & 11 Vict. c. 29, p. 100; of 13 & 14 Vict. c. 54, p. 106; of 16 & 17 Vict. c. 104, p. 109.
- Advocation, Bill of, none under 43 Geo. 3, c. 73, p. 8; when under 3 & 4 Will. 4, c. 103, p. 26; when under 7 & 8 Vict. c. 15, p. 77.
- Age of children to be employed, 12, 13, 57, 58, 59; under 10 & 11 Vict. c. 29, pp. 99, 107, 108; in silk mills, 12, 31, 57, 105; of young persons, 8, 9, 80, 99, 102, 103; certificates of age, 13, 14, 15, 36, 37; of real age, 40, 41, 57; certified copy, 41; evidence of, 13, 72; requisition for age certificate, 40; proof of age of persons alleged to be 16, p. 72; proof of age of persons alleged to be 18, p. 72.
- Age certificate book, nature of, 85; how formed, 85.
- Agent, definition, 81; service of proceedings on, 71; to be liable for infraction of 3 & 4 Will. 4, c. 103, p. 22; and 7 & 8 Vict. c. 15, p. 65.

- Agreement between mill occupier and surgeon, 38, 39; effect of counter signature, 38; no stamp requisite, 38. See "*Surgeon.*"
- Alphabetical index of workers, 90.
- Annulment of surgeon, 36; of surgeon's certificate by inspector or sub-inspector, 39, 40; of schoolmaster's certificate, 64; appeal, 64; proof of, 40.
- Appeal against annulment of schoolmaster's certificate, 64; when against conviction under 3 & 4 Will. 4, c. 103, p. 25; when against conviction under 7 & 8 Vict. c. 15, p. 78; notice of, 78; recognizance, 79; hearing, 79; adjudication, 79; costs, 79. See "*Conviction.*"
- Appearance of parties summoned, 69, 70; former summons, 94, 95, 96.
- Apprentices, within Factory Acts, 1, 80; in cotton and woollen factories, 1; clothes, 2; linen, &c., 2; hours for working, 2; under 42 Geo. 3, c. 73, p. 2; (see "*Hours for Labour;*") education, 3; at master's expense, 3; dormitories, 3; religious instruction and attendance at divine worship, 3, 4; surgical certificate necessary, 13; form of, 13, 14.
- Arbitration, as to dangerous machinery, 67.
- Artizans, exempted from Act, 27, 82.

B.

- Bleaching, employment in, exempted, 82.
- Burgh magistrates in Scotland, qualified as justices, 27, 79; refusal to countersign certificate, 16.

C.

- Calendering, employment in, exempt, 82.
- Certificate of age, 13, 40; by whom to be given, 13, 40; how, 13, 40; effect of, 40, 41; forgery of, 21, 75; of school attendance, 58, 62, 63; form, 86; forgery of certificates, 21, 75; of *nulla bona*, 25, 29; not to apply to females above 18, p. 59. See "*School.*"
- Certificates of surgeon, necessity for surgical, for children, 13, 14, 37, 39, 41; by whom given, 14, 36, 37; form of, 13, 14, 37, 83, 84; form of, for young person, 84; counter signature of, 15, 37, 84, 85; when given, 37, 38; provision for refusal, 16, 38; dispensation, 42; examination, 37, 84, 85; where required, 39; when to be

- obtained, 41; production of, 42; evidence of, 71, 72; annulling of, 39; by whom annulled, 39, 40; evidence of annulment, 40; when annulment rescinded, 40, 41; refusal of, 38, 86; certificate of real age, 14, 40; surgical certificate to be granted on age certificate, 41; penalty for want of, 14, 15, 73; punishment for forgery of, 21, 75; for counterfeit of, 75; register of all who require certificates, 37, 87, 90; form of, 87, 90; not required for persons above 16 years, 37; for what factory available, 41, 42; to be proof of age, 71, 72. See "*Surgeon*."
- Certiorari, none under 42 Geo. 3, c. 73, p. 8; when under 3 & 4 Will. 4, c. 103, p. 26; when under 7 & 8 Vict. c. 15, p. 77.
- Child, definition, 80; school, 18, 62, 63; employment, 10, 12, 13, 14, 57, 58, 89, 90; not under nine years, by 3 & 4 Will. 4, c. 103, p. 13; not under eight years, by 7 & 8 Vict. c. 15, p. 57; protection, 43, 44, 45; register, 89, 90; concealment from inspector, 34, 35; examination by inspector, 34, 35; by surgeon, 13, 14, 37, 38; by justice, 37, 85; certificate of surgeon, 13, 14, 83, 84; form, 13, 14, 83, 84. See "*Certificate of Age*," "*School*," "*Surgeon*."
- Christmas-day a holiday, 13, 62.
- Clerk of peace, entry of visitors' reports, 5; entry of mill under 42 Geo. 2, c. 73, p. 7; fee, 7.
- Clock, factory, for regulation of working time, 52, 53, 88, 91.
- Commitment under 3 & 4 Will. 4, c. 103, on non-payment or insufficiency of distress, 25, 68; form of, 30. See "*Penalty*."
- Compensation for injury, 52; action for, 52; costs in, 52; application of damages, 52.
- Complaints, preferment of, 23, 67; when, 23, 65, 67, 68; by inspector, 55; notice of intention to prefer, under 3 & 4 Will. 4, c. 103, p. 23; repealed by 7 & 8 Vict. c. 15, pp. 65, 67; complainant to have part of penalty under 3 & 4 Will. 4, c. 103, p. 26; as to application of penalty under 7 & 8 Vict. c. 15, p. 76.
- Constable, subject to inspectors and sub-inspectors, 16, 18, 23, 34, 70; remuneration, 18, 26; duties, 25, 34; service of summons, 70; to summon witnesses, 24; to provide place for sittings, 26; form of return of constable upon warrant of distress under 3 & 4 Will. 4, c. 103, p. 29.

Construction of Factory Acts, 80, 100, 106, 109.

Conviction, form of, under 42 Geo. 3, c. 73, p. 8; form under 3 & 4 Will. 4, c. 103, pp. 23, 25, 28; form under 7 & 8 Vict. c. 15, p. 96; filing, 8, 25, 77; evidence of former, 76; certified to quarter sessions, 25; not to be illegal for mere informality, 25, 78; penalty on second or subsequent, 75; no appeal from, except, &c., 25, 77; requisites of, 78; how appeal obtained, 78; notice of appeal, 78. See "*Appeal*."

D.

Declaration may be required by inspector, 34; of surgeon, 71, 72; of purification, 88; of change of sets, 90; penalty for forging or counterfeiting, 75.

Disorders in factory, 6; expenses as to, 6.

Distress and sale for infraction of 42 Geo. 3, c. 73, p. 7; of 3 & 4 Will. 4, c. 103, p. 23; of 7 & 8 Vict. c. 15, p. 68.

Dyeing, employment in, exemption, 82.

E.

Employed, definition, 80, 81.

Employment, see "*Hours for Labour*," "*Holidays*," "*Meal Times*," definition, 80, 81; of children under 9 prohibited by 3 & 4 Will. 4, c. 103, p. 12; in silk mills, 10, 12, 31; of young persons, age 9, penalties for illegal employment, 22, 72, 73; evidence of employment, 71.

Exemption from Factory Acts, repairs, 27, 82; artificers, 27, 82; packers, 10, 82; from offices, of inspectors and sub-inspectors, 34.

F.

Factory, definition, 81; regulation, 7; registration of, 7, 88; examination by inspector, 16; by sub-inspector, 34; copies of Act to be hung up, 6; abstract of, 21; rules and regulations, 2, 17, 21, 33; information as to how obtained, 18; what registers to be kept in, 53; forms of, 53, 87, 91. See "*Clerk of Peace*," "*Limewashing*," "*Notice*," "*Ventilation*."

Factory Act, defined, 33, 80.

False testimony, penalty, 21, 75.

Females, hours of working under 7 & 8 Vict. c. 15, p. 59; under 10 & 11 Vict. c. 29, pp. 99, 100; under 13 & 14 Vict. c. 54, pp. 102, 105.

Flax mills, protection in, 43.

Forms. Surgical certificate under 3 & 4 Will. 4, c. 103, p. 14; under 7 & 8 Vict. c. 15, pp. 83, 86; refusal thereof, 86; school certificate, 86; registers, 87, 91; notices, 91, 94; summons to witness or offender, 95; of meal times, 92; of recovery of lost time, 93. See titles "*Commitment*," "*Conviction*," "*Distress and Sale*."

G.

Good Friday, a holiday, 13, 62.

H.

Hair manufactory within Factory Acts, 9, 10, 81.

Hat manufactures exempt, 81.

Health of apprentices and others, 1. See "*Apprentices*."

Holidays. Allowance under 3 & 4 Will. 4, c. 103, p. 13; under 7 & 8 Vict. c. 15, pp. 62, 88; notice of, 62; complaints for not giving, 67, 68; under 16 & 17 Vict. c. 104, p. 109.

Hours for labour. Apprentices under 42 Geo. 3, c. 73, p. 2; children, 9, 57, 58; children under 11, 12, 13, p. 12; persons under 18, pp. 9, 10; females to be employed as young persons, 59; under 3 & 4 Will. 4, c. 103, pp. 9, 10; exception of certain factories, 10; extension of working hours in certain cases, 11; provision for time lost by unavoidable accident, 11; provision for time lost by want or excess of water in day-time, 11, 12, 103; children employed in one mill less than 9 hours, not to be employed in another for more than residue, 13; registers to be kept, 17, 18, 53; production of, 18, 69; penalty for child remaining on premises more than 9 hours, 20; punishment of parents for infraction of, 22; children under 13 in silk mills, 31, 32; provision for ensuring regularity in observance of time, 52, 91; hours of work when reckoned, 52; how regulated, 53; notice of restricted hours of labour, 58; provision for recovering lost time under 7 & 8 Vict. c. 15, pp. 59, 60, 93, 94, 103, 104, 108, 109; work to cease on Saturday at half-past 4, p. 61; penalties for employing children and young persons longer than allowed by 7 & 8 Vict. c. 15, pp. 72, 73; penalty on parents for allowing children to be employed contrary to

Act, 72; exemption when children engaged in winding silk, 79, 80; notices of, to be hung up in factory, 91; as regulated by 10 & 11 Vict. c. 29, pp. 98, 99; as regulated by 13 & 14 Vict. c. 54, p. 102; between 30th Sept. and 1st of April, 104, 105, 108; hours for employment of children as regulated by 16 & 17 Vict. c. 104, pp. 107, 108, 109.

I.

Information under 42 Geo. 3, c. 73; hearing, 7; requisites of, 78; mere informality not to vitiate, 78.

Injury in factory, investigation. See "*Accident.*"

Inspection of children by surgeon, see "*Certificate, 'Surgeon';*" by inspector, 16, 17, 34; by justice, 37; of mills by visitors, 5; by inspectors and sub-inspectors, 34; by surgeons, 34.

Inspector. Definition, 81; present inspectors, 16; appointment, 16; office, 35; privileges, 33, 34; protection, 35; powers in general, 16, 17, 34 (see "*Factory*" "*School*"); over constables, 23; to make orders and regulations, 17, 33; duty as to vouchers, certificates, registers, &c., 17; provision for regulation of duties, 35; as to regulation for guidance of certifying surgeon, 36; to settle form of requisition of registrar's certificate of age, 40; to provide additional schools, 19; may disallow schoolmaster's salary, 20; may annul certificate, 64; report annually his annulments, 64; may omit whitewashings, 21; may summon, commit, and discharge witnesses, 70; to levy penalty, 24, 25; to commit for nonpayment, 25; to direct application of penalty, 24, 25; to order constable to provide place for his sitting, 26; to report to secretary of state, 26; reports to be uniform, 26; to confer with his colleagues half-yearly, 27; to keep minutes of meetings, 27; to appoint surgeon, 36; to annul such appointment, 36; to countersign surgeon's agreement with factory occupier, 38; to fix surgeon's fees and times of visit, 38; to annul surgical certificates, 39, 40; to direct action for compensation, 52; to approve clock, 52, 53; to give and cancel notice of dangerous machinery, 66, 67; may allow deviation of meal times, 61; may be a witness, 69; may summon offenders, 70; penalty for obstructing, 23, 34, 74; to forward notice of accidents to factory office, 51.

Interpretation of words, masculine, 28; feminine, 28; singular number, 28; month, 31, 81; surgical certificate, 37; Factory Act, 33; child, 80; young person, 80; parent, 80; employed, 80, 81; inspector, 81; sub-inspector, 81; agent, 81; month, 81; mill gearing, 81; factory, 81; part of factory, 81, 82.

J.

Justices to countersign certificates, 14, 37, 84, 85; refusal, 15; convictions by, 22, 23; proceedings before, 23, 51. See "*Penalty.*" To summon agents and servants of factory owner, 24; to summon witnesses, commit or discharge them, 69, 70; who is competent to act, 79; to appoint visitors, 5; to hear informations under 42 Geo. 3, c. 73, p. 7. Jute, factory acts apply to, 81.

L.

Lace-mill excepted from 3 & 4 Will. 4, c. 103, p. 10; from 7 & 8 Vict. c. 15, pp. 81, 82.
Limewashing of factories, 2, 21, 43; entry in register, 88; penalty for omission, 73.
Limitation of time for informations, 67.

M.

Machinery to be fenced, 44; definition of fencing, 46, n. (f); notice of unguarded, 66; notice of dangerous, 66, 67, 74, 94, 95; form, 67; arbitration, 67; penalties, 66, 67; cleaning, 44, 45; dress of persons cleaning, 44, n. (s); fencing of machinery, 44, 45; penalty for omission, 73, 74; when complaints to be preferred, 67; penalty for omission after notice, 74.
Magistrates to have jurisdiction, 23; who to exercise powers of, 79.
Master of factory, to conform to 42 Geo. 3, c. 73, pp. 1, 2; to ventilate, 2; to limewash, 2, 21, 43; to instruct apprentice, 3; to provide religious instruction for apprentices, 3, 4; to send apprentices to church, 4; to cause church service to be celebrated in factory, 4; to provide medical assistance, 6; to hang up copies of 42 Geo. 3, c. 73, p. 6; to register factory, 7; penalties on, 7. See "*Occupier of Factory.*"

- Meals**, under 3 & 4 Will. 4, c. 103, p. 12; notice of, 56, 92; where affixed, 56, 92; time for, under 7 & 8 Vict. c. 15, p. 61; regulations as to, 61; under 13 & 14 Vict. c. 54, p. 103; under 16 & 17 Vict. c. 104, p. 109.
- Mechanics**, exemption from Factory Acts, 82.
- Mill washing**, 43; entry in register, 7, 88; entry with clerk of peace, 7.
- Mill gearing**, not to be cleaned while in motion, 43; definition, 81; dress of persons engaged in cleaning, &c., 44, 45.
- Mill owner**. See "*Occupier of Factory*."
- Mill warden**, who, 20.
- Month**, meaning of, 31, 81.
- Morals** of apprentices and others, 1.

N.

- Name of firm**, 24, 71; when used, 24, 71; of occupier, 36; in notice, 36; in register, 87, 88; of persons working in factory, 87; to be registered, 87.
- Night**, what, 9, 104; when working at night prohibited, 9, 60; when permitted, 10; obstruction of inspectors at night, 74; penalty for working at night, 73; young persons and females recovering lost time under 13 & 14 Vict. c. 54, p. 104.
- Notice**. Publication, 20, 91; hanging up in factory, 56, 92; forms of, 56, 57, 91, 94; to be renewed when illegible, 56; of preferring complaints, 23; but see 7 & 8 Vict. c. 15, s. 40, p. 65; of opening factory, 36; of accidents, 48, 51; of working hours, 56, 91, 94; of meals, 56; of holidays, 62; of restricting labour, 58; of recovery of lost time, 56, 57; of unguarded machinery, 66, 67, 74; of production of skilled witnesses, 66; of dangerous machinery, 66, 67, 74; forgery, or counterfeit of, 75; provision requiring notices of times of beginning and ending of work repealed, 102; under 13 & 14 Vict. c. 54, pp. 104, 105; under 16 & 17 Vict. c. 104, p. 108. See "*Appeal*."

O.

- Oath** may be required by inspector, 16, 17, 24; complaints by informer to be on oath, 46.

- Obstruction of inspector, 23, 74, 75; of sub-inspector, 74, 75; of visitor, 6; penalties, 74, 75. See "*Night*."
- Occupier of factory. See "*Certificate*," "*Master of Factory*," "*Penalty*," "*School*." Penalty for disobeying act or orders of inspector, 20, 65; may be summoned in name of firm, 24, 71; to give notice of occupation of factory, 36; agreement with surgeon, 38, 39; to pay surgeon's fees, 38, 39; to give notice of accidents, 48, 51; to keep registers of workers, 53, 87; may appeal against annulment of schoolmaster's certificate, 64; liable for violation of Factory Acts in first instance, 65; must sign duplicate notice of dangerous machinery, 67; right to arbitrate as to unguarded machinery, 67; penalty, 73, 74; declaration as to purification of factory, 88; as to change of sets of children, 90; penalty for infringing 42 Geo. 3, c. 73, p. 6; penalty for infringing 3 & 4 Will. 4, c. 103, p. 22.
- Offences under 7 & 8 Vict. c. 15, punishable by fine and imprisonment, 75; not otherwise specified, 75.
- Offender, summons of, 95.
- Office of factory inspectors, 35; object of, 35; appointment of clerks and servants, 35; salaries of, 35; management of office, 35; regulation of inspectors' duties, 35.
- Orders of inspectors, 18, 33, 36.

P.

- Packing, exemption of packers, 10, 82.
- Painting of factory to be registered, 88.
- Paper mill exempted, 82.
- Parent. See "*School*." Definition, 80; for unlawful employment, 22, 72, 73; or without certificates, 22, 72, 73.
- Partnership name, 24, 71. See "*Name*."
- Penalty on parent for unlawful employment of children, 22, 72, 73; for non-attendance of children at school, 73; on master for illegal employment, 6, 22, 73; for obstructing inspector, 23, 74, 75; for obstructing sub-inspector, 74, 75; for obstructing visitor, 6; for not sending notice of opening factory, 36; for not limewashing, 2, 41, 43; for not fencing machinery, 73, 74; for forging of certificates, 21, 75; for making false declaration, 75; for giving false testimony, 20; for offences not specifically provided for,

- 6, 22, 75 ; for repetition of offences, 24, 26, 68 ; for offending against 42 Geo. 3, c. 73, pp. 6, 7 ; how recovered, 7 ; for allowing child to remain on premises more than nine hours, 20 ; for infraction of 3 & 4 Will. 4, c. 103, p. 22 ; by distress and sale or commitment, 23 ; number of penalties recoverable, 24, 26 ; repealed, 65 ; application of, under 3 & 4 Will. 4, c. 103, p. 26 ; repetition of offences under 7 & 8 Vict. c. 15, p. 68 ; how recovered, 68, 69 ; on second or subsequent convictions, 75.
- Penalties, recovery of, 68 ; application of, 76 ; excuse of, 76 ; mitigation, 76 ; remission, 76.
- Playground, provision as to, 20, 71.
- Printing, employment in, exempt, 82.
- Printworks not within Factory Acts, 1, 9, 33, 98, 101, 107.
- Proceedings for recovery of penalties, before whom, 7, 23, 25, 27, 68 ; mere informality in, not to vitiate, 25, 78 ; for infraction of 3 & 4 Will. 4, c. 103, before whom to be had, 23.

R.

- Registers to be kept in every factory, 53 ; forms of, 53 ; inspector may require extracts and other information, 53 ; evidence of contents, 53 ; production of, 53, 69 ; punishment for forgery or counterfeit of, 75. See "*Factory*."
- Registers of children employed, 89 ; attending school, 87 ; of workers in factory, 89 ; of birth, 40 ; requisition for, 40 ; of young persons, 87 ; form of, 87 ; compelled production of, 53, 69.
- Regulations of inspectors, power to make them abridged, 33, 34 ; penalty for violation, 22 ; for surgeon, 36 ; notice of, 20 ; publication of, 21.
- Religious instruction of apprentices, 3, 4.
- Repairs, persons so engaged exempted from Factory Acts, 27.
- Repeal of 1 & 2 Will. 4, c. 39, pp. 27, 28.
- Reports of visitors, 5 ; entry, 5 ; of physician on infections, 6 ; of inspectors, 26, 27 ; of surgeon, 51.
- Requisition for certificate of age, form of, 40.
- Ropeworks what, not within Factory Acts, 1, 9, 97.
- Sacramental fast a holiday, 62.
- Saturday, working on, 58, 61, 102, 104, 107, 108 ; attending school on, 63.
- Sanitary regulations, 6 ; disorders, 6 ; infectious disease, 6.

School certificate necessary, 18, 19, 63 ; by whom provided, 3, 18, 19, 63 ; attendance under 42 Geo. 3, c. 43, p. 3, penalty, 6 ; under 3 & 4 Will. 4, c. 103, pp. 18, 19, penalty, 21, 22 ; under 7 & 8 Vict. c. 15, pp. 58, 62, 63, penalty, 73 ; absence, 19, 63, 86, 87 ; inspector may compel attendance, 17 ; payment, 19, 64 ; voucher of attendance, 19, 64 ; certificate, 58, 63, 64 ; form of, 63, 86 ; register of vouchers, 63 ; examination of vouchers, 63 ; entry by inspector, 16, 34 ; entry by sub-inspector, 16, 34 ; provision as to play-grounds and schools, 20 ; provision for additional schools, 19 ; provision for children remaining in schools, 20 ; penalties under 3 & 4 Will. 4, c. 103, to be applied for benefit of schools, 26 ; attendance on alternate working days, 58 ; penalty on parents for not sending children to school, 73.

School certificate book, 86, 87.

Schoolmaster, appointment, 3, 18, 19 ; salary, 20, 63 ; how paid, 19, 63 ; fees, 63 ; disallowance, 20 ; duty, 18, 19 ; certificates, 63, 64 ; form of, 86, 87 ; annulled, 64 ; appeal, 64.

Secretary of state may rescind annulment of schoolmaster's certificate, 64 ; appoints sub-inspectors, 18 ; receives inspectors' reports, 26, 27 ; makes regulations for management or factory officers, 35 ; may rescind annulment of surgeon's appointment, 36 ; may authorize action for compensation, 52 ; directs application of penalties under 7 & 8 Vict. c. 15, p. 76 ; remits same, 76.

Servant at factory liable for offences against Factory Acts, 22, 65.

Service of summons, 24, 71 ; of warrant, 71.

Sessions, petty, to decide propriety of refusal of counter-signature of certificate, 16 ; quarter sessions appoints visitors, 5 ; receives reports, 5 ; hears appeals, 25, 26, 77, 78.

Sets of children, 89, 90.

Sickness, absence from work by, 17 ; school, 17, 63.

Sittings, constable to provide inspectors place for holding, 26.

Silk-mills, what within 3 & 4 Will. 4, c. 103, p. 10 ; employment of children in, 12, 31, 79, 80, 85, 90, 105 ; notices in, 92.

Sleeping apartments of apprentices, 3 ; beds, 3.

Stamp on surgeon's agreement, 38.

Statutes, 24 Geo. 2, c. 44, p. 35 ; 27 Geo. 3, c. 11, p. 75 ; 42

- Geo. 3, c. 73, pp. 1—8, 9, 10, 15, 21, 26, 28, 43, 62, 80;
 59 Geo. 3, c. 66, p. 28; 60 Geo. 3, c. 5, p. 28; 6 Geo. 4,
 c. 63, pp. 8, 28; 10 Geo. 4, c. 51, p. 28; 10 Geo. 4, c.
 63, p. 28; 1 & 2 Will. 4, c. 39, pp. 1, 27, 28; 3 & 4 Will.
 4, c. 103, pp. 1—3, 6, 8, 9—30, 31, 33, 34, 36—39,
 41—43, 53, 56—59, 62—66, 68, 72—76, 80, 81, 82, 83,
 97—101, 102—109; 4 & 5 W. 4, c. 1, pp. 9, 12, 25, 31,
 32, 33, 80, 98, 101; 5 & 6 Will. 4, c. 76, s. 128, p. 76; 6 & 7
 Will. 4, c. 86, s. 37, p. 41; 7 & 8 Vict. c. 15, pp. 1—3,
 5, 6, 8, 9—28, 30, 31—33, 96, 97, 98, 100—107, 109;
 8 & 9 Vict. c. 29, pp. 1, 9, 33, 82, 98, 101, 107; 9 & 10
 Vict. c. 40, pp. 1, 9, 33, 43, 81, 97, 101; 10 & 11 Vict.
 c. 29, pp. 9, 10, 31—33, 59, 98—100, 101, 102, 106, 107,
 109; 10 & 11 Vict. c. 70, pp. 1, 9, 33, 82, 98, 107; 11
 & 12 Vict. c. 43, pp. 8, 24, 28, 29, 30, 68, 69, 77, 95, 96;
 12 & 13 Vict. c. 45, p. 53; 13 & 14 Vict. c. 54, pp. 6, 9,
 10, 11, 12, 21, 31, 32, 33, 52, 56, 59, 60, 61, 71, 80, 89,
 91, 92, 93, 98, 99, 100, 101—106, 107, 109; 16 & 17
 Vict. c. 104, pp. 9, 10, 11, 12, 13, 31, 32, 33, 57, 58, 60,
 61, 62, 80, 93, 98, 100—109.
- Steam, escape of, into factory, 43.
- Stoppages, recovery of time lost by, 11, 12, 59, 60, 61, 93, 94,
 103, 104, 108, 109; notice of, 56, 93; how published,
 56, 93.
- Sub-inspector, interpretation of, 81; appointment, 16, 18;
 salary, 18; duties, 18; privileges, not to serve on juries,
 &c., 34; powers, 18, 34; protection, 35; may be wit-
 ness, 69; annuls surgical certificate, 39, 40; obtains
 summons, 68, 69; evidence by, 69; penalty for obstruct-
 ing, 23, 34, 74, 75; complaint by, 68, 69, 72. See
 "*Inspector*."
- Summons, names in, 24, 71; form, 24, 95; how obtained, 68;
 service, 24, 71; of witness, 24; form, 71, 95; requisites
 of, under 3 & 4 Will. 4, c. 103, p. 26; issue of, under
 7 & 8 Vict. c. 15, pp. 68, 69.
- Sunday, instruction of apprentices on, 3, 4.
- Surgeon, notice of, to be fixed up in factory, 56, 88, 91; ap-
 pointment, 36; regulations for guidance, 36; annulling
 appointment, 36; revocation of annulment, 36; disquali-
 fications, 36; duties, 36, 37, 38; visits, 38, 39, 42, 88;
 form of, 83, 86; examinations for certificate, 14, 37, 38;
 certificates, 13, 14, 83, 84; must be countersigned, 14,
 37, 84, 85; fees, 36; agreement, 36, 39; may be taken

by inspectors into factory, 34 ; to send notice of accidents to sub-inspector, 51 ; to investigate accidents and report, 51 ; power to investigate, 51 ; fee for investigation, 52. See "*Agreement*," "*Certificate*."

T.

Time. See "*Hours for Labour*," "*Meals*," "*Stoppages*."

V.

Ventilation of factory, 2 ; must be sufficient, 2 ; penalty, 6.
Visitation by visitors, 5 ; by surgeon, 42 ; entry on register, 42 ; form of entry, 42.
Visitors, under 42 Geo. 3, c. 73, p. 5 ; qualification, 5 ; appointment, 5 ; duties, 5 ; reports, 5 ; powers, 5 ; in case of infectious disorders, 6 ; to receive reports as to infectious disorders, 6 ; expenses, &c., 6 ; penalty for obstructing, 6.
Vouchers of school attendance. See "*School*."

W.

Wages, deduction for schooling, 19, 63 ; for surgeon's fees, 38, 39.
Warrant of distress, 7, 23, 25, 68 ; form of, under 3 & 4 Will. 4, c. 103, p. 29 ; return of constables thereto, p. 29 ; of commitment, 8, 23, 25, 68 ; service, 71 ; for an offender, 70, 95 ; for witness, 70, 95.
Washing factories, 2, 43 ; with quicklime and water, 2, 42 ; penalty for not, 13, 73 ; entry on register of washings, 88.
Wet spinning flax mills, protection of workers in, 43.
Whitewashing factories, 21, 43.
Windows, factory must be well supplied with windows and openings, 2.
Witnesses, summons by inspector or justice, 24, 69, 70, 95 ; to administer oath to, 24, 69, 70 ; contumacy, 24, 69, 70 ; resisting constable, 24, 69, 70 ; commitment, 24, 69, 70 ; discharge, 24, 25, 70 ; inspector may be, 69 ; sub-inspector may be, 69 ; notice of skilled, 66 ; punishment

for false testimony, 21 ; attendance, how enforced, 60 ;
who may summons, 60, 70 ; form of summons, 95.
Women to be employed as young persons, 59. See "*Hours
for Labour.*"
Working hours for apprentices. See "*Hours for Labour.*"
Workmen liable to penalties against Factory Acts, 22, 65.

Y.

Young person, interpretation, 80 ; register, 87, 88 ; certificate, 84 ; form of, 84 ; to be protected in flax mills, 43 ;
from dangerous machinery, 66, 67, 74 ; hours for working
as regulated by 13 & 14 Vict. c. 54, pp. 102, 103 ; and
see "*Holidays*," "*Hours for Labour*," "*Meal Times*."

THE END.

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INDEX.

<i>Names of Authors.</i>	<i>Titles of Works.</i>
ARCHBOLD	Justice of the Peace and Parish Officer. Poor Law. Common Law Practice. County Courts Practice. Bankrupt Law. Crown Office Practice. Landlord and Tenant. Law relative to Notices and Grounds of Appeal in cases of Orders of Removal, &c. Buller's Acts, 11 & 12 Vict. Laws of England (Summary of). Jervis's Acts, 11 & 12 Vict. Poor Law Removals and Appeals (Practice of). The Acts 9 & 10 Vict. c. 66, and 10 & 11 Vict. c. 83, relating to the Removal of the Poor. Pauper Lunatics (Law and Practice of). Succession Duty Law. Criminal Procedure, Pleading and Evidence in Indictable Cases. Law of Partnership, Joint Stock Companies, &c. Baines' Act, 11 & 12 Vict. Parish Officer. Snowden's Magistrates Assistant, and Police Officers and Constables Guide. Nisi Prius. Quarter Sessions (Practice of). Highways (Law of). Joint Stock Companies Acts, 1856, 1857, 1858. Abridgment of Poor Law Cases. Consolidated Orders.—Poor Law. Corporations, Municipal. Gosling v. Veley, Full Report, House of Lords.
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	Cornish's Treatise on Purchase Deeds.
	Probate and Administration.
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JERWOOD	Parochial Boundaries (mode of settling).

INDEX.

<i>Names of Authors.</i>	<i>Titles of Works.</i>
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